RNI No. MAHBIL/2009/31744
Reg. No. MH/MR/South-318/2013-15

सत्यमेव जयते

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ५, अंक ४८] गुरुवार ते बुधवार, जानेवारी ३०-फेब्रुवारी ५, २०१४/माघ १०-१६, शके १९३५ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 211 OF 2000.—Shri Sampat Mahadeo Bhatmare, At Post Junepargaon, Tal. Hatkanagale, Dist. Kolhapur.—*Complainant.*—*Versus*—The Agricultrual Produce Market Committee, Vadgaon (Peth), Tal. Hatakanagale, Dist. Kolhapur. Through its Chairman and Secretary.— *Respondents.*

In the matter of : Complaint u/s. 28(*1*) read with items 5, 6, 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.
Advocates.— Shri D. S. Desai, Advocate for the Complainant.
Shri R. V. Sirdesai, Advocate for the Respondent.

Judgment

This is a complaint purported to be under section 28(*1*) read with items 5, 6, 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

2. Admittedly, the Respondent is constituted under The Maharashtra Agricultural Produce Marketing Act. Committee's Secretary appointed the Complainant as watchman by office order dated 30th September 1997, for the period from 6th October 1997 to 31st December 1997, on fixed salary of Rs. 1500 per month. Office order say that the Complainant is appointed temporary for 3 months. Later on, the Complainant is again appointed as a watchman for the period from 5th January 1998 to 31st March 1998 by another order dated 1st January 1998. He was then called for interview for the post of temporary cleark on 11th August 1998. He was then appointed for the period from 1st September 1998 to 28th February 1999 as a clerk on fixed salary of Rs. 1500 per month, *vide* order dated 24th August 1998. In the same fashion he was further appointed from 1st March 1999 to 31st August 1999 by order dated 26th September 1999.

3. It is case of the Complainant that though his appointment orders contain a specific period, he was employed continuously by series of appointment orders without any physical break. Moreover, he was appointed on clear vacant post to do work of perennial nature. Thus, he has put in 'continuous service' from 6th October 1997 onwards. He, therefore, has attained status and privileges of a permanent employee but is employed as temporary with the object to deprive him benefits of permanency.

4. It is alleged by the Complainant that he is working on clear vacant post and doing work of perennial nature but no wages are paid like paid to employees working as clearks. As such, it amounts to victimisation or partiality to one set of workers, regardless of merits.

5. It is further case of the complainant that he was appointed on recommendations received from Employment Exchange and appointed on clear vacant post of clerk. He has worked for more than 240 days each year and thus attained status of a permanent employee as per provisions of Industrial Employment (Standing Orders) Act as well as Industrial Disputes Act.

6. It is further alleged by the Complainant that he is deprived of getting statutory benefits like salary as per approved pay-scale, leave with wages, bonus etc. as per Model Standing Orders. But no such benefits are extended to him. Committee's such act is an unfair labour practices under items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

7. On above averments, the Complainant has prayed for requisite declaration of unfair labour practices, directions to the Committee to award permanency to him and monthly wages as per approved pay scale and on par with other clearks and other consequential reliefs.

8. The Committee filed its written statement at Exh. C-1 and traversed some of the material allegations made by the Complainant. It contended at the outset that the Complainant filed Complaint (ULP) No. 281 of 2000 in the Labour Court, Kolhapur alleging unfair labour practice under item 1 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, and therefore, this Complainant is barred by Section 59 of the M. R. T. U. and P. U. L. P. Act, 1971.

9. According to the Committee, it can employ permanent employees only after permission of Director of Marketing of Maharashtra State. It can appoint employees on temporary basis to meet temporary requirements. The Complainant was never appointed on vacant post and hence is not entitled to permanency although worked for 240 days. The Complainant will be considered for permanent employment as and when vacancy arises and the Director of Marketing, Maharashtra State permits. Eventually, the Complainant is not entitled to equal wages and benefits like of permanent clearks. Finally, it prayed for dismissal of the complaint.

10. Considering rival pleadings, following points arise for my determination:—

(*i*) Whether complaint is barred by provision of Section 59 of the M. R. T. U. and P. U. L. P. Act, 1971 ?

(*ii*) Does the Complainant prove that the Committee continued him as temporary with the object of depriving him of the status and privileges of a permanent employee ?

(*iii*) Does the Complainant further prove that he is entitled to wages at per with other permanent clerks ?

(*iv*) Does the complaint further prove that the Committee has indulged into unfair labour practices ?

(*v*) What Order ?

11. My findings, on above points, are as under :—

(*i*) No.

(*ii*) No.

(*iii*) Yes.

(*iv*) Yes.

(*v*) The Complaint is partly allowed.

Reasons

12. The Committee has admitted in its written Statement (Exh. C-1) that the Complainant is an employee. It is further stated in paragraph No. 2 of the Written Statement that provisions of the M. R. T. U. and P. U. L. P. Act, 1971 and I. D. Act 1947 are applicable to the Committee. Thus, it is needless to state that the Committee is 'an industry' as defined under Section 2(*j*) of the I. D. Act and the Complainant is an employee as defined under section 3(*5*) of the M. R. T. U. and P. U. L. P. Act. Eventually, the complaint is maintainable.

13. The Complainant has produced Four Appointment orders, Committee's letter dated 3rd August, 1998 inviting him for an interview on 11th August 1998, details of staff schedule and vacant posts therein and order of approved pay scales of the clerks, with list Exh. U-4.

14. None of the parties led oral evidence but relied upon documentary evidence.

15. Approved staff schedule produced with list Exh. U4/6 says that there are 8 sanctioned posts of clerks, out of which 5 permanent clerks are working, two temporary clearks are appointed and one post of clerk is vacant.

16. Interview call (produced with list Exh. U-4/3) says that a candidate belonging to open category is to be appointed as temporary cleark on daily wages and the Complainant should appear for interview. Approved pay scale of clerk is Rs. 260-5-285-10-335-EB-15-505.

17. Office order appointing the Complainant says that he is temporarily appointed on the post of clerk. It is further stated in those orders that he will not be entitled to wages and allowances like paid to permanent employees.

18. I must state here that two other complainants have filed Complaint (ULP) No. 210 of 2000 and 212 of 2000 against the Committee on identical grounds. The Committee has produced material documents with list Exh. C-6 in Complaint (ULP) No. 210 of 2000. Both Advocates submitted that those documents be perused. Those documents say that Marketing Director permitted the Committee on 18th April 1990 to create two additional posts of clerks. The Committee requested the Director by letter dated 3rd July 1997 to sanction post of Grader permanently. The Director then replied on 27th October 1997 that expenditure of the Committee is more than the prescribed percentage of income and, therefore, no additional post is sanctioned. It is further stated in the reply that percentage of expenditure is more than the prescribed percentage of income and hence posts vacant on Committee's establishment should not be filled in. District Deputy Registrar of Co-operative Societies then wrote to the Director of Marketing, Maharashtra State on 24th June 1998 that vacant posts should be filed in. The Committee also sent letters seeking permission to fill up vacant posts. There is nothing on record to show that the Director of Marketing then replied to the letter or refused the permission.

19. Shri Desai, Learned Advocate representing the Complainant vehementaly argued that the Complainant is still in service. It implies that he is doing work of perennial nature, Model Standing Orders are applicable to the Committee and, therefore, the Complainant has attained status and privilege of permanent employee. There is no reason to continue the complainant for years together as a temporary. The Committee took interview of many candidates and selected the Complainant out of them. Director of Marketing has stated in letter dated 29th October 1997 that vacant posts should not be filed. However, District Deputy Registrar has clarified that expenditure will not increase though all vacant posts are filled. Committee's letter dated 18th July 2001 shought permission to fill up vacant posts but Marketing Director has not replied in either way. Marketing Director has no absolute authority superior than the provisions of law. The complainant is doing work of perennial nature, appointed against a vacant post and, therefore, is entitled to permanency and equal wages on completion of 240 days's service.

20. Shri Sirdesai, Learned Advocate, representing the Committee replied that the Committee cannot appoint permanent employees without permission of the Director of Marketing under Rule 100(5) of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967.

21. Section 59 of the M. R. T. U. and P. U. L. P. Act provides that if any proceeding in respect of any matter falling within the perview of said Act, is instituted under said Act, then no proceeding shall be entertained in respect of same matter under the I. D. Act or B. I. R. Act and *vice-a-versa*. In the present case, the Complainant has filed Complaint under the M. R. T. U. and P. U. L. P. Act on the ground of aprehended termination before the Labour Court. There are no simultaneous proceedings regarding same matter under the M. R. T. U. and P. U. L. P. Act, I. D. Act or BIR Act. As such, the complaint is nowhere barred by section 59 of the M. R. T. U. and P. U. L. P. Act. Accordingly, I answer point No. 1 in the negative.

22. It is not in dispute that the Respondent Committee is constituted under Maharashtra Agricultural Produce marketing (Regulation) Act and certainly covered by the provisions therein and rules made thereunder.

23. Section 35(*1*) of above Act speaks about powers of a marketing Committee to employ staff. It says that a Marketing Committee may employ necessary employees provided all posts other than of a Secretary shall be created only with a prior approval of the Director.

24. Advocate Shri Desai, therefore, canvassed that permission under rule 100(5) is not necessary and parent section *i. e.* Sec. 35(*1*) of the Act will prevail. He further relied on decision is *Burroogh Welcome (I) Ltd.* V/s. *D. S. Ghosle and Ors. reported in 2001(2) Mah. L. J. at page 54.*

25. Section 35*(3)* of above Act provides that powers conferred on Marketing Committee under Sec. 35*(1)* and *(2)* shall be exercised subject to any Rules which may be made in that behalf by the State Government. Thus, Sub-Section *(3)* is in a nature of provisio. State Government has made rules in exercise of the powers conferred by Sub-Section *(1)* and *(2)* of Sec. 60 of the above Act. Rule 100*(5)* says that no appointment to any post for a period not exceeding 6 months shall be made except with previous approval of the Director. It has come on record that the Respondent -Marketing Committee has time and again sought permission of the Director for respective appointment. Eventually, it cannot be accepted that it has continued the Complainant as temporary one with the object of depriving him of the status and privileges of a permanent employee. In short, Rule 100 (3) has created a complete embargo on powers of the Marketing Committee to create new Posts except with the sanction of the Director. Therefore, observations in *Burrough welcome (I) Ltd.* V/s. *D. H. Ghosale's* case (referred supra) are of no help to the Complainant. Consequently, I answer Point No. 2 in the negative.

26. The Complainant is working as a clerk with effect from 6th October 1997, however, is continued from time to time by various orders. Market Committee's staffing patterns says that there are 8 sanctioned post of a clerk out of which, 5 are permanent clerks and two persons are working as temporary clearks. Thus, it is clear that the Complainant is doing work of perennial nature. In the light of dictum of Honourable Apex Court in *Food Corporation of India* V/s. *Shyamal Chetterjee* reported in *2000 SOL case No. 554,* the Complainant is entitled to wages at par with other permanent clerks. The Marketing Committee has simply pleaded that there is no unfair labour practice on its part in pay Rs. 1500 per month to the Complainant. Honourable apex Court has held in above decision that casual workers working in same department doing the same work are entitled to equal wages. As such, non-payment of equal wages is an unfair labour practice under item 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act. I answer point Nos. 3 and 4 accordingly.

27. In the light of above discussions and findings, the complaint needs to be allowed partly directing the Respondent Marketing Committee to pay equal wages to the Complainant.

28. In the result, I pass following order.

Order

(i) The Complaint is partly allowed.

(ii) It is declared that the Respondent - Marketing Committee has engaged in unfair labour practice under item 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

(iii) The Respondent -Marketing Committee is directed to cease and desist from engaging in such unfair labour practice forthwith.

(iv) The Respondent is directed to pay wages to the Complainant at par with other permanent clerks from 1st February 2002.

(v) Parties shall bear their own costs.

C. A. JADHAV
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 14th February 2002.

V. D. PARDESHI
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 189 OF 1999.—Maharashtra State Road Transport-Corporation, Ratnagiri Division, Ratnagiri.—*Petitioner.*—*Versus*—Narayan Ganapati Khurasane, At Post : Charegaon, Tal. Karad, Dist. Satara.— *Respondent.*

In the matter of Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri M. G. Badadare, Advocate for the Petitioner.

Shri D. N. Patil, Advocate for the Respondent.

Judgment

This is a Revision by original Respondent Maharashtra State Road Transport Corporation challenging legality of judgment and orders passed in Complaint (ULP) No. 221 of 1990 by the Labour Court, Kolhapur whereby it is directed to reinstate its employee with continuity of service but without back wages.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) was working under present Petitioner (hereinafter referred to as the State Road Transport Corporation) as a driver since the year 1983. The Corporation served a chargesheeted dated 22nd June 1990 upon him mainly alleging that he drove Corporation's bus at an excessive speed in a rash and negligent manner and thereby committed a fatal accident. Then an enquiry took place and ultimately, he was dismissed *vide* order dated 24th November 1990. The Complainant then filed above complaint on 10th December 1990 alleging that the incident is purely and simply an accident and no negligence could be attributed towards him. None of eye witnesses were examined in the enquiry. The Enquiry Officer acted as a Judge cum Prosecutor and principles of natural justice were violated. He prayed to post-pone the enquiry till disposal of criminal case filed against him but it was refused. As such, enquiry is not fair and proper and the findings are altogether perverse. It is further contended that punishment of dismissal is shockingly disproportionate. Finally, he prayed for reinstatement with continuity of service and full back wages.

3. The Corporation filed its written statement at Exh. 13 contending that the Complainant drove the bus in a rash and negligent manner in an excessive speed resulting into injuries to several passengers and death of one person. The misconduct caused damage of Rs. 35000 to the bus and Rs. 35000 to the truck. Eventually, a chargesheet was served upon him and a fair enquiry was made. Findings of the enquiry officer are well supported and justified by the evidence on record. Proved misconduct is grave and serious and, therefore, punishment of dismissal is legal and proper, Finally, it prayed for dismissal of the complaint.

4. The Labour Court then framed issues at Exh. 15 and the parties went to the trial. None of the parties led oral evidence. The Corporation produced entire papers and Complainant's default card.

5. The Labour Court, on perusal of evidence and hearing both parties, held that the enquiry is fair and proper as well as findings thereof are not perverse. It then held that Complainant's past record is substantially clean and unblemished. It then relying upon decision in *Divisional Controller* V/s. *Gulab Bhandarkar reported in 1998 I Mah. Law Journal* at page 818 held that punishment of dismissal is shockingly disproportionate. Ultimately, it allowed the complaint partly directing reinstatement with continuity of service without back wages, *vide* judgment and order dated 18th June 1999. The same is challenged in this Revision.

6. I heard both parties. Considering rival contentions, following points arise for my determination :—

(*i*) Whether impugned finding that punishment of dismissal is shockingly disproportionate is justifiable ?

(*ii*) What Order ?

7. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

8. It needs to be stated at the outset that the Complainant made interim application (Exh. U-2) before the Labour Court for interim temporary reinstatement, where on ex-parte order was made directing the Corporation to allow him to hoin on duties until further orders with show cause notice. said Application (Exh. U-2) was not finally decided on merits and the Complainant is in employment from 25th January 1991 onwards till to-day.

9. It also needs to be stated further that the Complainant has not filed counter revision challenging affirmative finding recorded by the Labour Court that the enquiry is fair and the findings of the Enquiry Officer are not perverse. On the contrary, his counsel supported entire impugned decision. Thus, it can be well said that affirmative finding of the Labour Court that the enquiry is fair and the findings are nor perverse, are not disputed by the Complainant. Even otherwise, I find those to be based on proper appreciation of evidence and cannot be branded as perverse.

10. This is a revision under section 44 of the M.R.T.U. and P.U.L.P. Act, 1971, it is not necessary to scruinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable.

11. Shri Badadare, learned Advocate representing the Corporation vehementaly argued that learned Labour Court misconstrued observations in *Bhandarkar's case* (referred supra). In that case, the incident took place on a curve but such are not the facts in hand. Many passengers were in jured and one passenger died. Therefore, it will not be appropriate to reinstate the Complainant as safety of public at large will be in danger.

12. Shri D. N. Patil, learned Advocate representing the Complainant countered above arguments and replied that Complainant's past record from the year 1983 is almost clean except one incident of unauthorised absence on 18th February 1988 for which a fine of Rs. 5 is imposed. Besides, his subsequent conduct after temporary reinstatement from January 1991 till to-day is also unblamished. Past record serves as a barometer to consider the punishment to be imposed. Therefore, the Labour Court rightly relied on decision in Bhandarkar's case and granted reinstatement. Besides, the Corporation is given liberty to impose appropriate punishment except punishment of discharge or dismissal.

13. His Lordships has categorically observed in *Bhandarkar's* case that case of an employee who commits a misconduct on one occasion is certainly different from that an employee who has been charged for several occasions and the misconduct is proved against him. It is further observed that past record serves as a barometer to consider nature of punishment which is to be imposed. In the present case, Complainant's past record from 1983 till to-day is almost unblamished. except present one. Consequently, it cannot be accepted that the punishment of dismissal is legal and proper. Observations in *Bhandarkar's case* (referred *Supra*) are clearly applicable to this case. besides, the Corporation is given liberty to impose appropriate punishment for the proved misconduct except dismissal or discharge. I, therefore, hold that the Labour Court has rightly allowed the complaint holding that the punishment of dismissal is shockingly disproportionate. Accordingly, I answer point No. 1 in the affirmative.

14. To summarise, impugned order do not suffer from any arbitrariness or perversity. on the contrary, there is every substance in its reasoning. As such, no interference is called for.

15. Finally, I pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 8th February 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 95 OF 1999.—(1) Depot Manager, M.S.R.T. Corporation, Gadhinglaj, Dist. Kolhapur. (2) Divisional Controller, M. S. R. T. Corporation, Kolhapur Division, Kolhapur.—*Petitioners.*—*Versus*—Shri Mallikarjun Raosaheb Malagi, R/o Nul, Tal. Gadhinglaj, District Kolhapur.— *Respondent.*

REVISION APPLICATION (ULP) No. 132 Of 1999.—Shri Mallikarjun Raosaheb Malagi, R/o Nul, Tal. Gadhinglaj, Ditstrict Kolhapur.—*Petitioner.*—*Versus*—(1) Depot Manager, M.S.R.T. Corporation, Gadhinglaj, Dist. Kolhapur. (2) Divisional Controller, M.S.R.T. Corporation, Kolhapur Division, Kolhapur.— *Respondents.*

In the matter of : Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Adv. D. N. Patil, and Adv. B. D. Manolkar, for employee.

Adv. M. G. Badare, for the State Transport Corpn.

Judgment

These Revisions are arising out of judgment and order delivered in Complaint (ULP) No. 204 of 1992 by the Labour Court, Kolhapur whereby an order of reinstating a driver with continuity of service but without back wages with liberty to inflict suitable punishment other than of dismissal or discharge, is passed. Revision Application (ULP) No. 95/99 is preferred by the employer Maharashtra State Road Transport Corporation challenging impugned decision to the extent of reinstatement.

2. Revision Application (ULP) No. 132 of 1999 is preferred by the driver challenge impugned decision as regards refusal of back wages and liberty to impose suitable punishment except of dismissal or discharge.

3. Admittedly, the driver (hereinafter referred to as the Complainant) was serving under Respondent-Maharashtra State Road Transport Corporation. The Corporation served chargesheet dated 27th October 1988 upon him alloging misconduct under clauses 10,22 and 45 of its Discipline and Appeal Procedure and an enquiry was held. On completion of enquiry, he was terminated on 11th December 1990. His first Departmental Appeal was dismissed on 12th July 1991. Where as second on 27th March 1992.

4. The Complainant then filed above complaint on 5th May 1992, *inter alia* contending that he was on night duty on 26th October 1988 at village Nul. He on 27th October 1988 returned from Nul to Gadhinglaj. He then started suffering from abdomenal pain and, therefore submited a leave application and went for medical treatment. He took medical treatment, then came to bus stand at about 10.00 o'clock for going to his home. At that time, the Traffic Controller called him and alleged that he has consumed alcohol. He was then taken to police station and prosecuted. In fact, he was not on duty on 27th October 1988, rejection of his leave application was never communicated to him and therefore, the leave is deemed to have been granted. But the Enquiry officer did not consider this material aspect and recorded a perverse finding that he is guilty of several misconducts. As such, his termination is an unfair labour practice.

5. It is further alleged that he was bonafidely prosecuting departmental remedy *i.e.* appeals and therefore the complaint is with limitation. It also his case that his past record was not considered and its an unfair labour practice.

6. On above averments, the Complainant prayed for declaration of unfair labour practice, direction to reinstate with continuity of service and full back wages and other consequential reliefs.

7. The Corporation filed its written statement at Exh. 12 contending at the outset that the complaint is barred by limitation. It is case of the Corporation that the complainant was found under influence of alcohol at 7 a.m. on 27th October 1988 but refused to undergo test of alcohol and therefore, was required to be taken to police station. Act of consuming alcohol while on duty was serious one and, therefore, was rightly chargesheeted. proved charges of misconduct were grave and serious and therefore, was dismissed from service. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

8. The Labour Court then framed issues at Exh. 16 and the parties when to the trial. The Complainant did not lead oral evidence. The Corporation produced entire enquiry papers alongwith Complainant's default card.

9. The Labour Court on perusal of enquiry papers, past record and hearing both parties, held that the complaint is not within limitation but condoned the delay. It then held that findings of the Enquiry Officer are supported by evidence on record and cannot be branded as perverse. Ultimately, it held that presentation of application for leave by the Complainant and non-communication of refusal there of shows that the Complainant was technically on duty. Eventually, it held that extreme punishment of dismissal is an unfair labour practice. Ultimately, it allowed the complaint partly by directing reinstatement with continuity of service but without back wages from 15th June 1999 *vide* judgment and order dated 15th May 1999. The same is challenged in these Revisions.

10. I heard both Advocates. Considering rival contentions, following points arise for my determination :—

(*i*) Whether impugned decision directing reinstement with continuity of service but without back wages with a liberty to impose suitable pnishment except of dismissal or discharge, is justifiable ?

(*ii*) What Order ?

11. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) Both Revision Applications are dismissed.

Reasons

12. It needs to be stated at the outset that Complainant's Revision Application 132 of 1999 is restricted to the extent of refusal of back wages and liberty to impose suitable punishment except of dismissal or discharge. There are no averments in Revision Memo that observations of learned Labour Court that findings of the Enquiry Officer are supported by evidence on record, are unsuitainable in law. On the contrary, his Counsel canvassed that full back wages ought to have been granted. Thus, it can be well said that affirmative findings of the Labour Court that the Enquiry is fair and the findings are not perverse. Is not disputed by the complainant. Even otherwise, I find the same to be based on proper appreciation and cannot be branded as perverse. Learned Labour Court has rightly held that the Complainant was found to have been consumed alcohol on 27th October 1988.

13. Shri Badare, learned Advocate representing the Corporation vehementaly argued that consumption of liquor while on duty and that too by a driver is a serious misconduct. Public interest must be considered, No reasonable and prudent employer would permit a driver to driver a bus after consumption of liquor. But the Labour Court extended misplaced sympathy to the Complainant. In support of his arguments, he relied on *Bastimal* V/s. *Maharashtra State Road Transport Corporation Reported in 1998 I LLJ at Page 690* and *Divisional Controller, M. S. R. T. Corporation* V/s. *S. N. Ghorpade and Ors. reported in 2000 (86) PLR at page 187.* Finally, he submitted that Corporation's revision Application be allowed by dismissing original complaint.

14. Shri Patil, learned Advocate representing the Complainant countered above arguments and replied that the Complainant is acquitted by Judicial Magistrate, Gadhinglaj. Besides, the Complainant had already submitted an application for leave after returning to Gadhinglaj has started suffering from abdomenal paid. It is probable that alcohol was consumed after returning to Gadhinglaj and making an application for leave. Therefore, the Complainant cannot be said to be on duty in real sense. He further replied that decisions relied by the Corporation are regarding the driver who were physical on duty after consumption of liquor but such are not the facts of this case and therefore, observations therein, cannot be applied here. He further replied that in the peculiar facts and circumstances of the case, refusal of back wages for 10 years plus liberty to impose punishment except dismissal or discharge is very harsh punishment.

15. In Bastimal's case (referred supra) an employee was a bus-conductor, consumed alcohol and caused public commotion putting passengers to inconvenience and the Corporation was required to arrange a substitute crew. The bus conductor after consuming liquor started shouting in the bus and caused public commotions. But such are not the facts in this case. Here the complainant had already submitted an application for leave, came on the bus stand for going to his native place and was checked at that time. Therefore, it cannot be accepted that he was physically on duty. Learned Labour Court, has therefore rightly held that the Complainant could only be said to be on duty technically.

16. Advocate Shri Patil, relied on decision of Apex Court in *Jaswantsing V/s. Pepsu Roadways transport Corporation reported in 1984 (49) FLR at Page 193.* In that case, a driver of a passenger bus was charged of consuming liquor and that too while on duty. The Labour Court, in view of his first misconduct, directed reinstatement without back wages. Honourable Apex Court held that the Labour Court was right and justified in directing reinstatement. It was further held that additional punishment of stopping three increments is necessary to keep the driver withing the bounds of well disciplined conduct. I am respectfully bound by the observations of Apex Court.

17. I am also respectfully bound by the observations made in *Ghorpade's* case (referred supra). In that case, a driver reported for duty on 23-00 hours on consumption of alcohol and was under its influence. He was also behaving in an indecent and ritous manner. Had he been allowed to drive a bus carrying more than 50 passengers, it was certainly fatal to their lives. With full respect to the observations of their Lordships, in my humble opinion, Ghorpade's decision cannot be applied here. In the present case, the Complainant was not physically on duty on any vehicle but was proceeding to his native place and that too after submitting an application for leave. He never intended to drive the vehicle after applying for leave. In such circumstances, I find that the learned Labour Court has rightly directed reinstatement without back wages by permitting the Corporation to impose suitable punishment except of dismissal or discharge. Refusal of back wages is must to keep the complainant within the bounds of disciplined conduct. I, therefore, hold that no interference is called for. Accordingly, I answer point No. 1 in the affirmative and pass following order :—

Order

(*i*) Both Revision Applications are dismissed.

(*ii*) Copy of this judgment be kept in other Revision Application.

(*iii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 21st February 2002.

V. D. PARDESHI
Asstt. Registrar,
Industrial Court, Kolhapur.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

BEFORE SHRI C. A. JADHAV, MEMBER

COMPLAINT (ULP) No. 210 OF 2000.—Shri Bhagoji Annappa Herwade, At Post Hupari, Taluka Hatkanagale, District Kolhapur.—*Complainant—Versus*—The Agricultrual Produce Market Committee, Vadgaon Peth, Tal. Hatakanagale, Dist. Kolhapur, through its (*i*) Chairman and (*ii*) Secretary.— *Respondents.*

In the matter of : Complaint U/s. 28(1) read with items 5, 6, 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri D. S. Desai, Advocate for the Complainant,
Shri R. V. Sirdesai, Advocate for the Respondents.

Judgment

This is a complaint purported to be under section 28(*1*) read with items 5, 6, 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

2. Admittedly, the Respondent Committee constitute under maharashtra Agriculture Produce Market Committee Act. Committee's Secretary appointed the Complainant as Clerk in Committee's office by office order dated 30th September 1997, with effect from 6th October 1997 on salary of Rs. 1500 per month. Office order says that the Complainant is appointed temporary for 3 months. Later on, the Complainant is again appointed for the period from 5th January 1998 to 31st March 1998 by another order dated 1st January 1998. He was then again appointed for the period from 1st September 1998 to 28th February 1999 (6 months), by third order dated 24th August 1998. In the same fashion, he was again appointed for the period from 1st March 1999 to 31st August 1999 (6 months) *Vide* order dated 26th February 1999.

3. It is case of the Complainant that though his appointment orders contain a specific period, he was employed continously by series of appointment orders without any physical break. Moreover, he was appointed on clear vacant post to do work of perennial nature. Thus, he has put in 'continous service' from 6th October 1999 onwards. He, therefore, has attained status and privileges of permanent employee but is employed as temporary with the object to deprive him benefits of permanency.

4. It is alleged by the Complainant that he is working on clear vacant post and doing work of perennial nature but no wages are paid like paid to employees working as clearks. As such, it amounts to victimisation or partiality to other workers, regardless of merits.

5. It is further case of the complainant that he belongs to nomadic tribe and the post on which he was appointed, was reserved for a candidate of nomadic tribe. He was appointed on recommendations of Social Welfare and employment Exchange, Office of Kolhapur. Besides, two posts of clerks are vacant and one is reserved for candidate of a nomadic tribe. He has worked for more then 240 days in each year and thus attained status of a permanent employee as per provisions of the Industrial Employment (Standing Orders) Act as well as Industrial Disputes Act.

6. It is further alleged by the Complainant that he is deprived of getting statutory benefits like salary as per approved pay-scale, leave with wages, bonus etc. as per Model Standing Orders. But no such benefits are extended to him. Committee's such act is an unfair labour practices under items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

7. On above averments, the Complainant has prayed for requisite declaration of unfair labour practices, directions to the Committee to award permanency to him and monthly wages as per approved pay scale and as per with other clearks and other consequential reliefs.

8. The Committee filed its written statement at Exh. C-7 and traversed some of the material allegations made by the Complainant. It contended at the outset that the Complainant filed Complaint (ULP) No. 282 of 2000 in the Labour Court, Kolhapur alleging unfair labour practice under item 1 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, and therefore, this Complaint is barred by section 59 of the M. R. T. U. and P. U. L. P. Act, 1971.

9. According to the Committee, it can employ permanent employees only after permission of Director of Marketing of Maharashtra State who can appoint temporary to meet temporary requirements. The Complainant was never appointed on vacant post and hence is not entitled to permanency although worked for 240 days. The Complainant will be considered for permanent employment as and when vacancy arises and the Director of Marketing, Maharashtra State permits. Eventually, the Complainant is not entitled to equal wages and benefits like of permanent clearks. Finally, it paryed for dismissal of the complaint.

10. Considering rival pleadings, following points arise for my determination :—

(*i*) Whether complaint is barred by provision of section 59 of the M. R. T. U. and P. U. L. P. Act, 1971 ?

(*ii*) Does the Complainant prove that the Committee continued him as temporary with the object of depriving him of the status and privileges of a permanent employee ?

(*iii*) Does the Complainant further prove that he is entitled to wages at per with other permanent clerks ?

(*iv*) Does the complaint further prove that the Committee has indulged into unfair labour practices ?

(*v*) What Order ?

11. My findings, on above points, are as under :—

(*i*) No.

(*ii*) No.

(*iii*) Yes.

(*iv*) Yes.

(*v*) The Complaint is partly allowed.

Reasons

12. The Committee has admitted in its written Statement (Exh. C-7) that the Complainant is an employee. It is further stated in paragraph No. 2 of the Written Statement that provisions of the M. R. T. U. and P. U. L. P. Act, 1971 and I. D. Act are applicable to the Committee. Thus, it is needless to state that the Committee is 'an industry' as defined under section 2(*1*) of the I. D. Act and the Complainant is an employee as defined under section 3(*5*) of the M. R. T. U. and P. U. L. P. Act. Eventually, the complaint is maintainable.

13. The Complainant has produced Four Appointment orders, Committee's letter dated 3rd August 1998 inviting him for an interview on 11th August 1998, staff schedule and vacant posts therein and order of approved pay scales of the clerks, with list Exh. U-4. In rebuttal, the Committee has also produced order of approved pay scale and other correspondence with the Co-operative Department and direction of Marketing, Maharashtra State.

14. None of the parties led oral evidence but relied upon documentary evidence, produced on record.

15. Approved staff schedule (produced with list Exh. U-4/6) says that there are 8 sanctioned posts of clerks, out of which 5 are permanent clerks are working. Besides, two temporary clearks are working and one post of clerk is vacant. Interview call (produced with list Exh. U-4/3) says that a candidate belonging to Nomadic tribe is to be appointed as a temporary clerk on daily wages and the Complainant should appear for intervew. Approved pay scale of a clerk is Rs. 260-5-285-10-335-EB-15-505.

16. Office order appointing the Complainant says that he is temporarily appointed on the post of clerk. It is further stated in those orders that he will not be entitled to wages and allowances like paid to permanent employees.

17. Documents produced by the Committee with list Exh. C-6 say that Marketing Director permitted the Committee on 18th April 1990 to create two additional posts of clerks. The Committee requested the Director by letter dated 3rd July 1997 to sanction post of Grader permanently. The Director then replied that expenditure of the Committee is more than the prescribed percentage of income and, therefore, no additional post is sanctioned. It is further stated in the reply that percentage of expenditure is more than the prescribed percentage of income and hence posts vacant on Committee's establishment can not be filled in. District Deputy Registrar of Co-operative Societies then wrote to the Director of Marketing, Maharashtra State on 24th June 1998 that vacant posts should be filed in. The Committee also sent letters seeking permission to fill up vacant posts. There is nothing on record to show that the Director of Marketing then replied to the letter or refused the permission.

18. Shri Desai, learned advocate representing the Complainant vehementaly argued that the Complainant is still in service. It implies that he is doing work of perennial nature. Model Standing Orders are applicable to the Committee and, therefore, the Complainant has attained status and privilege of permanent employee. There is no reason to continue the complainant for years together as a temporary. The Committee took interview of many candidates and selected the Complainant out of them. Director of Marketing has stated in letter dated 29th October 1997 that vacant posts should not be filed. However, District Deputy Registrar has clarified that expenditure will not increase though all vacant posts are filled. Committee's letter dated 18th July 2001 shought permission to full up vacant posts but Marketing Director has not replied in either way. Marketing Director has no absolute authority superior than the provisions of law. The complainant is doing work of perennial nature, appointed against a vacant post and, therefore, is entitled to permanency and equal wages on completion of 240 days's service.

19. Shri Sirdesai, learned advocate, representing the Committee replied that the Committee cannot appoint permanent employees without permission of the Director of Marketing under Rule 100(5) of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1987.

22. Section 59 of the M. R. T. U. and P. U. L. P. Act provides that if any proceeding in respect of any matter falling within the preview of said Act, is instituted under said Act, then no proceeding shall be entertained in respect of same matter under the I. D. Act or B. I. R. Act and *vice-a-versa*. In the present case, the Complainant has filed Complaint under the M. R. T. U. and P. U. L. P. Act on the ground of aprehended termination before the Labour Court. There are no simultaneous proceedings regarding same matter under the M. R. T. U. and P. U. L. P. Act, I. D. Act or BIR Act. As such, the complaint is nowhere barred by section 59 of the M. R. T. U. and P. U. L. P. Act. Accordingly, I answer point No. 1 in the negative.

21. It is not in dispute that the Respondent Committee is constituted under Maharashtra Agricultural Produce marketing (Regulation) Act and certainly covered by the provisions therein and rules made thereunder.

22. Section 35*(1)* of above Act speaks about powers of a marketing Committee to employ staff. It says that a Marketing Committee may employ necessary employees provided all posts other than of a Secretary shall be created only with a prior approval of the Director.

23. Advocate Shri Desai, therefore, canvassed that permission under rule 100(5) is not necessary and parent section *i. e.* Section 35*(1)* of the Act will prevail. He further relied on decision is *Burroogh Welcome (I) Ltd.* V/s. *D. H. Ghosle and Ors. reported in 2001(2) Mah. L. J. at page 54.*

24. Section 35*(3)* of above Act provides that powers conferred on Marketing Committee under section 35*(1)* and *(2)* shall be exercised subject to any Rules which may be made in that behalf by the State Government. Thus, sub-section *(3)* is in a nature of provisio. State government

has made rules in exercise of the powers conferred by Sub-Section *(1)* and *(2)* of Sec. 60 of the above Act. Rule 100*(5)* says that no appointment to any post for a period not exceeding 6 months shall be made except with previous approval of the Director. It has come on the record that the Respondent -Marketing Committee has time and again sought permission of the Director for respective appointments. Eventually, it cannot be accepted that it has continued the Complainant as temporary one with the object of depriving him of the status and privileges of a permanent employee. In short, Rule 100 (5) has created a complete embargo on powers of the Marketing Committee to create new Posts except with the sanction of the Director. Therefore, observations in *Burrough welcome (I) Ltd.* V/s. *D. H. Ghosale's* case (referred supra) are of no help to the Complainant. Consequently, I answer Point No. 2 in the negative.

25. The Complainant is working as a clerk with effect from 6th October 1997, however, is continued from time to time by various orders. Market Committee's staffing patterns says that there are 8 sanctioned post of a clerk out of which, 5 are permanent clerks and two persons are working as temporary clerks. Thus, it is clear that the Complainant's are doing work of perennial nature. In the light of dictum of Honourable Apex Court in *Food Corporation of India* V/s. *Shyamal Chatterjee* reported in *2000 SOL case No. 554,* the Complainant is entitled to wages at par with other permanent clerks. The Marketing Committee has simply pleaded that there is no unfair labour practice on its part in pay Rs. 1500/- per month to the Complainant. Honourable apex Court has held in above decision that casual workers working in same department doing the same work are entitled to equal wages. As such, non-payment of equal wages is an unfair labour practice under item 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act. I answer point Nos. 3 and 4 accordingly.

26. In the light of above discussions and findings, the complaint needs to be allowed partly directing the Respondent Marketing Committee to pay equal wages to the Complainant.

27. In the result, I pass following order.

Order

(i) The Complaint is partly allowed.

(ii) It is declared that the Respondent - Marketing Committee has engaged in unfair labour practice under item 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, 1971.

(iii) The Respondent -Marketing Committee is directed to cease and desist from engaging in such unfair labour practice forthwith.

(iv) The Respondent is directed to pay wages to the Complainant at par with other permanent clerks from 1st February 2002.

(v) Parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 14th February 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 39 OF 2001.—Shri Anant Laxman Mali, At Post : Pedhe Parsharam, (Malewadi), Tal. Chiplun, District Ratnagiri.—*Petitioner—Versus* The Divisional Controller, M.S.R.T. Corporation, Ratnagiri, Division, Ratnagiri.—*Respondent.*

In the matter of : Revision Application under section 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri M. K. Kadam, Advocate for the Petitioner.

Shri M. G. Badadare, Advocate for the Respondent.

Judgement

This is a Revision by original Complainant challenging legality of order passed below Exh. U-2 in Complaint (ULP) No. 74 of 2001 by the Labour Court, Kolhapur, whereby interim relief is refused.

2. Admittedly, present Petitioner (hereinafter referred to as the Complainant) is working under present Respondent (hereinafter referred to as the State Road Transport Corporation) as conductor. He was on duty on 10th October 1998 on Bombay-Dodawali bus. The bus was checked at Pen-Ramwadi by Checking Squad and a report was then submitted to Divisional Traffic Superintendent. Then a chargesheet was served upon the Complainant mainly alleging re-sale or re-issuing of used tickets and thereby showing act of dishonesty. Enquiry Officer held the Complainant guilty of dis-obedience of general standing orders but exonerated him from charges of re-sale of re-issue of used tickets as well as of dishonesty. Eventually, Corporation's Competent Authority imposed punishment of reduction in wages by three stages for a period of 3 years with cumulative effect *vide* order dated 23rd January 2001.

3. It is case of the Complainant that he then preferred First Departmental Appeal on 22nd February 2001 to Divisional Controller but the Appellate Authority-Divisional Controller did not consider his Appeal properly nor gave an opportunity of personal hearing. On the contrary, the Divisional Controller-Appellate Authority *suo-moto* called enquiry papers and issued show cause notice to him observing that punishment imposed is too linient and he proposes to enhance the same to termination of his service. Appellate Authority's such action, in absence of any appeal from the Department, is bad in law.

4. It is further case of the Complainant that Corporation's service regulations do not empower the Appellate Authority to review any punishment as well as to enhance the same. In additions action of enhancing the punishment will amount to two punishments which is impermissible in law. As such, Appellate Authority's *suo-moto* show cause notice proposing to award punishment of dismissals is an unfair labour practice under Items 1(*a*), (*b*), (*f*) and (*g*) of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. The Complainant then made an application (Exh. U-2) u/s. 30(*2*) of the M.R.T.U. and P.U.L.P. Act to stay show cause notice dated 28th February, 2001, till decision of main complaint.

5. The Corporation filed its say cum written statement at Exh. C-33, contending that the Complainant was found to have committed serious misconducts like re-issue or resale of used tickets and dishonesty. Eventually, the Divisional Controller reviewed entire enquiry papers, found that punishment imposed is too linient and propose to enhance the same. Divisional Controller's such act is perfectly legal and correct as he has powers to *suo moto* call enquiry papers and to enhance the punishment. Thus, the Corporation justified its action and prayed for dismissal of interim application as well as the complaint.

6. The labour Court on perusal of documentary evidence and hearing both parties, held that action of Appellate Authority-Divisional Controller is in consonance with Clause 9 of Corporation's Discipline and Appeal Procedure. It further held that the Divisional Controller has proposed to award punishment of dismissal instead of earlier punishment and hence, it does not amount to double punishment. Ultimately, it refused to grant interim relief by order dated 9th July 2001. The same is challenged in this Revision.

7. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order refusing to grant interim relief is sustainable in law ?

(*ii*) What order ?

8. My findings on above points are as under :—

(*i*) Yes.

(*ii*) The Revision Application is rejected.

Reasons

9. Shri Kadam, learned Advocate representing the Complainant vehemently argued that the Divisional Controller has no authority to propose enhanced punishment as no appeal is preferred by the Department. Eventually, show cause notice drawn by him is altogether contrary to provisions of Discipline and Appeal Procedure. In support of his arguments, he relied on the decision in *S. R. Nagre V/s. Divisional Controller, MSERTC, Nasik and another reported in 1987 (S4) FLR at page 108.* He then added that Appellates Authority can either reject or accept the appeal but cannot imposed a higher punishment then what was imposed by the Disciplinary Authority. Besides, two punishments cannot be given for same misconduct. For that and he relied on the decision in *The Depot Manager, A. P. S. R. T. Corpn. V/s. N. Ramulu and others reported in 1996 Lab. I. C. page 1422 (Andhra Pradesh H. C.).* He further added that revisional powers can be used when an appeal cannot be filed for some reasons. The Corporation ought to have file an appeal if dissatisfied with order of disciplinary authority. In that context, he relied on *Makeshwar Nath Srivastav V/s. The State of Bihar and others reported in AIR 1971 Supreme Court at Page 1108.* Finally, he submitted that approach of the Labour Court is altogether unsustainable and prayed to allow the Revision.

10. Shri Badadare, learned advocate representing the Corporation countered above arguments and replied that appeal and orders thereof is one aspect and is another. Clause 9 of Original as well as amended Disciplinary and Appeal Procedure is self eloquent. It says that the Appellate Authority may *suo moto* call for the enquiry papers and review the decision in any case as it deems fit within one year and pass appropriate order. Eventually, the Divisional Controller is well within the powers of review and justified in issuing show cause notice. He further replied that punishment of dismissal is proposed in lieu of punishment imposed and therefore, question of double punishment is altogether irrelevant. He then explained that Nagre's case (referred supra) pertains to appeal. In an appeal against order imposing punishment, the Appellate Authority is bound by the limitations prescribed in Rule 10 of Discipline and Appeal Procedure. However, Rule 9 is separate, distinct and independent one. Appellate Authority Divisional Controller can *suo moto* exercise powers given under clause 9. Therefore, the Labour Court rightly refused to grant interim relief. Finally, he prayed for dismissal of the Revision Application.

11. I perused original as well as amended Disciplinary and Appeal Procedure of the Corporation Rule 9 is no-where materially amended. It is better to reproduce the same, here :—

> 9. " The Appellate Authority may, *suo-moto* call for the enquiry papers and review the decision in any case as it may deem fit within one year and set aside the Competent Authority's order of punishment and substitute its own order by enhancement or reduction of the punishment as the case may be or retain the Original order of the Competent Authority. "

12. Likewise, Rule 10 is regarding Appeal and Powers of a Appellate Authority. Right of Appeal against imposition of punishment is given to both parties. Therefore, as held in Nagare's case (*Supra*) Appellate Authority cannot enhance a punishment imposed in absence of Departmental appeal for enhancement of punishment.

13. But the facts of this case are self eloquent. It appears that copy of punishment imposed by Disciplinary Authority was forwarded to Divisional Controller-Appellate Authority as per the procedure. Thereafter, the Appellate Authority *suo moto* in excercise of powers under of Rule 9 of Discipline and Appeal Procedure, decide to review decision of he Competen Authority. The words *suo moto* appearing in Rule 9 are self explanatory. In other words, Appellant Authority can *suo moto* review decision of Competent Authority in absence of departmental appeal. Therefore, it cannot be accepted *prima facie,* that Act of issuing show cause notice to the Complainant is contrary to the departmental procedure as well as bad in law. On the contrary, the Appellate Authority is within its powers under Rule-9 when issued show cause notice to the Complainant. I must state here itself that the question as to whether Appellate Authority was justified in *suo moto* reviewing decision of the Competent Authority and proposing punishment in lieu of awarded one, is irrelevant, at this stage. It is specific case of the Complainant that the Appellate Authority cannot, *suo moto i. e.* in absence of an Appeal from the Departmental can review order of Competent Authority. Rule-9 of Discipline and Appeal Procedure is the answer for the same.

14. Question of double punishment is altogether irrelevant as the Appellate Authority-Divisional Controller has proposed to impose punishment of termination instead of punishment imposed. Thus, it is needless to state that the there is not and cannot be double punishment. I am respectfully bound by the decisions relied by Advocate Shri Kadam, representing the Complainant. As discussed above, question of justification of the Appellate Authority in *suo moto* reviewing punishment of Competent Authority is immaterial at this stage. In Makeshwar's case (*supra*), there was specific rule. In this case, Rule-9 of Discipline and Appeal Procedure specifically empowers the Appellate Authority to take *suo-moto* action. Therefore, observations in Makeshwar's case are of no help to the Complainant. Besides question of amendment of Discipline and Appeal Procedure and powers thereof is also of no importance in view of specific provision under Rule 9.

15. To summaries, Rule-9 of D. A. Procedure specifically empowers Appellate Authority to review *suo-moto* order of Competent Authority. For exercising powers under Rule-9, presentation of an Appeal by the Department is not a condition precedent. Question of justification of Appellate Authority to *suo moto* review the punishment imposed is immaterial at this stage. I, therefore, find that learned labour Court has rightly refused to grant interim relief. Accordingly, I answer Point No. 1 in the affirmative and pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur.
Dated the 26th February 2002.

V. D. PARDESHI,
Assistant Registrar,
Industrial Court, Kolhapur.

***Before* THE MEMBER, INDUSTRIAL COURT AT KOLHAPUR**

REVISION APPLICATION (ULP) No. 215 OF 1994.—Shri Mahadeo Govind Dige, Digewadi, At Post : Kapsal, Tal. Chiplun, District Ratnagiri.—*Petitioner*—*Versus*—The Chairman, Nav-Konkan Education Society, Chiplun, District Ratnagiri.—*Respondent.*

In the matter of : Revision U/s. 44 of the M. R. T. U. & P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Smt. N. A. Ramtirthakar, Advocate for the Petitioner.

Shri D. N. Patil, Advocate for the Respondent.

Judgement

This is a Revision by original Complainant challenging legality of judgment and order passed in Complaint (ULP) No. 233 of 1989, by the labour Court, Kolhapur, whereby relief reinstatement by setting aside his alleged termination, is refused by dismissing his complaint.

2. Present Petitioner (hereinafter referred to as the Complainant) filed above Complaint on 28th December 1989 alleging that he was in employment of present Respondent (hereinafter referred to as the Education Society) from 7th December 1998 as a Peon on daily wages basis. He was doing work of perennial nature worked continuously for 240 days without break. Even then, he was illegally terminated on 24th October 1989 without one month's notice or pay thereof or paying retrenchment compensation. Besides, no seniority list was exhibited on the Notice Board and the Principle "last come first go" is not followed. Education Society's such act, therefore, is an unfair labour practice under item 1(a), (b), (f), and (g) of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, 1971. Consequently, he claimed reinstatement with continuity of service and full back wages.

3. The Education Society filed its written statement at Exh. 10 contending that it runs College at Chiplun and the Principal of said College is the head. The Principal alone appointed him and that too as a casual worker. It (Education Society) never appointed him and, therefore, there is no relationship of employer employee. Besides, the Complainant was engaged only as a casual workman. He was never muster roll or Society or College. Moreover, he has not worked for 240 days in a year. His services were never required after October, 1998 and therefore, was not engaged. As such, it has not engaged into any unfair labour practices. Finally, it prayed for dismissal of the complaint.

4. The labour Court then framed issues at Exh. 11 and the parties went to the trial. The Complainant simply examined at Exh. U-12. The Society examined Registrar of the College at Exh. 15 and produced receipt/vouchers about payment of charges to the Complainant.

5. The Labour Court on perusal of evidence and hearing both parties, held that the Complainant was not employed through official source of recruitment and that too for work of casual nature. It then disbelieved plea of working of more than 240 days. Ultimately, it held that no unfair labour practice is proved and dismissed the complaint *vide* judgment and order dated 24th October 1994. The same is challenged in this Revision.

6. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned decision dismissing the complaint is justifiable ?

(*ii*) What order ?

7. My findings on the above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

8. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable.

9. Smt. Ramtirthakar, learned Advocate representing the Complainant argued that the Complainant was doing work of perennial nature but was given artificial breaks. Provision of section 25-F and G of Industrial Dispute Act were not complied before termination the Complainant but the labour Court did not appreciate such aspects properly and arbitrarily dismissed the complaint.

10. Shri. D. N. Patil, learned Advocate representing the Education Society replied that Complainant's services were availed as and then needed. He worked in various departments of the College as and when needed and was paid on voucher. Plea of putting continuous service of 240 days is without material particulars as well as evidence. On the contrary, vouchers produced on record clearly show that he was employed as a casual worker. Therefore, the labour Court rightly dismissed the complaint.

11. Although, the Complainant deposed that he worked from 27th June 1987 to 23rd October,1989, he replied in the cross examination that he has no evidence except his words to prove that he worked for 240 days. On the other hand, vouchers produced on record show that he worked casually in various Departments of the College as and when work was available. Thus, it cannot be accepted that he was doing work of perennial nature. The fact that no monthly wages were paid to him and his name was not entered on the muster roll further fortifies Society's contention that he was casual worker. Consequently, question of his termination does not arise at all. Besides, there is no possitive and convincing evidence to show that he has completed 240 days of contineous service as provided under Sec. 25-F of the Industrial Dispute Act. In such circumstances, I find that learned labour Court has rightly refused to grant any relief to him. Impugned decision nowhere suffers any perversity or arbitrariness warranting interference by this Court. Accordingly, I answer Point No. 1 in the affirmative and pass the following order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur.
Dated the 31st January 2002.

V. D. PARDESHI,
Assistant Registrar,
Industrial Court, Kolhapur.

Before **SHRI U. R. PATIL, PRESIDENT, INDUSTRIAL COURT MAHARASHTRA AT MUMBAI**

Revision Application (ULP) No. 187 of 2001—M/s. Morarji Gokuldas Spg. and Weaving Mills Ltd., Unit No. 1, Dr. Ambedkar Road, Parel, Mumbai-400 012.—*Applicant.*—*Versus*—Mrs. Namita Prabhakar, A-709, Bhagnari Co-operative Hsg. Society Ltd., Duncan Causeway Road, Next to Chunabhati, Railway Station Road, Mumbai-400 022.—*Respondent.*

Revision Application (ULP) No. 209 of 2001—Mrs. Namita Prabhakar, Mumbai-400 022.—*Applicant.*—*Versus*—M/s. Morarji Gokuldas Spg. and Weaving Mills Ltd.,—*Respondent.*

In the matter of Revision u/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri S. M. Naik, Ld. Advocate for the Mill.

Shri S. N. Deshpande, Ld. Advocate for the employee.

Oral Common Judgement

(10th April 2002)

The Revision Application (ULP) No. 187 of 2001 is preferred by the Original Respondent *i. e.* M/s. Morarjee Gokuldas Spg. and Wvg. Mills Ltd. and Revision Application (ULP) No. 209 of 2001 is preferred by the Original Complainant *i. e.* Smt. Namita Prabhakar feeling aggrieved of the impugned judgment and order below Exh. U-2 dated 14th May, 2001 whereby the 5th labour Court, Mumbai partly allowed the Application of the Original Complainant, rejecting the prayer of Complainant for reinstatement in service, but directing the Respondent to deposit monthly wages of the Complainant in the Court till final disposal of the complaint.

2. The brief facts giving rise to the case may be stated as follows :—

Record reveals that Complainant Smt. Namita Prabhakar joined the service of the Original Respondent *i. e.* M/s. Morarjee Gokuldas Spg. and Wvg. Mills Ltd. as an Asst. Internal Auditor in Audit Section w.e.f. 16th January 1980. She has been confirmed on the said post on 1st August 1980 and thereafter she was promoted as Internal Audit Officer from August, 1985. According to the Complainant her service record was clean and unblemished. She states that she worked right from the date of her appointment till the termination of her services in Internal Audit Department and she is a Bachelor in Arts. According to her, even though she was designated as Internal Audit Officer, she was not carrying out any managerial, administrative or supervisory duties and hence she claims that she was an 'employee' within the meaning of Industrial Dispute Act .M.R.T.U. and P.U.L.P. Act. It is further stated that the work of internal audit does not require the supervision of any one's work.

3. The main contention of the Complainant is that she was on duty on 2nd January 2001 and had carried out her work and on 3rd January 2001 she was issued with a termination order and after the letter of termination, she immediately made complaint to the Union *viz.* Rashtriya Mill Mazdoor Sangh who made complaint to the Respondents, but there was no response. Thereafter the Complainant gave approach notice and to this also there is no reply. As per the submission of the Complainant, the reason for her termination is patently false and there is a violation of Sec. 25-F, 25-N of the Industrial Dispute Act. She states that her termination is by way of victimisation and under colourable exercise of the employer's right, with undue haste and therefore she alleged that the Respondents have engaged in unfair labour practice prescribed under Item 1(a), (b), (d) and (f) of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. The Complainant filed Application Exh. U-2 for interim relief.

4. The Respondent by filing affidavit-in-reply resisted the Application Exh. U-2 stating that the complaint itself is not maintainable as the Complainant is not a 'workman' and 'employee' within the meaning of the BIR Act. Respondents stated that the Complainant was engaged in managerial, administrative and supervisory category and was performing such duties. It is also stated that one Mr. B. Pandurang and another who were also both employed in the technical and supervisory cadre, were directly working under the Complainant and used to report her.

5. The Respondent states that the Complainant used to supervise their work and also used to assess the work performed by them like audit of wages to employees, their increments, leave records, etc. It is also submitted that the Respondent Mill is running in huge losses. As a result of the same, the Respondent Mill introduced V. R. S. and the Complainant was given offer as given to others. However, the Complainant declined and therefore considering the situation, the Respondent Mill was finally constrained to terminate her services. It is denied that the Complainant was not carrying out any managerial, administrative or supervisory duties. It is also denied that services of the Complainant have been terminated as the Respondent wants to give work to Aneja Associate, as alleged. The Respondent further denies that there is a violation of statutory provisions, as mentioned in the complaint and Interim Application Exh. U-2 and therefore requested to dismiss the Application.

6. I have called for the record and proceedings and gone through the same. Heard learned. Advocate Shri S. N. Deshpande for the Original Complainant and Shri S. M. Naik, learned Advocate for the Original Respondent Mill. The following points arise for my determination with my findings thereon as below :—

Points

(1) Whether Revision Application (ULP) Nos. 187/2001 and 209/2001 are to be allowed, as prayed ?

(2) What order and relief ?

Findings

Point No. 1 :— No.

Point No. 2 :—Please see order below.

Reasons

7. *Point No. 1* :—Both the Revision Application (ULP) No. 187/2001 and 209/2001 are arising out of order below Exh. U-2 dated 14th May 2001 passed by the 5th labour Court, Mumbai in Complaint (ULP) No. 67/2001 and hence the same are disposed of by common judgment.

8. The Complainant Smt. Nandita Prabhakar claimed that she joined as Asst. Internal Auditor in Audit Section from 16th January 1980 and was confirmed on 1st August 1980. Thereafter she was promoted as Internal Audit Officer from August 1995. It is submitted by Mr. S. N. Deshpande, learned Advocate for the employee that the services of the Complainant have been wrongly terminated by order dated 3rd January 2001 and the same is without any reason when her service record was clean and unblemished. Mr. Deshpande further stressed that there is a violation of Sec. 25-F and 25-N of the Industrial Dispute Act, thereby the employer has adopted unfair labour practice and hence the Complainant has challenged the said action of termination of her services by filing the Complaint in question and prayed for the interim reliefs, as mentioned in Exh. U-2. Mr. Deshpande further canvassed that the termination order was issued by letter dated 28th December 2000 w.e.f. 3rd January 2001. Mr. Deshpande further stressed that in fact the Complainant was offered V.R.S. like other employees, but the said offer was declined by the Complainant and therefore the termination order has been passed and her work of auditing entrusted to Aneja Associates. In short, Mr. Deshpande urged that in the impugned order, the labour Court has directed the employer to deposit the monthly wages in the Court till the final disposal of the complaint, but he pressed for only the relief of permitting the Complainant to withdraw the part amount of the wages so deposited.

9. On the contrary, Mr. S. M. Naik by filing the Revision Application (ULP) No. 187/2001, referred to above, challenged the impugned order passed by the labour Court. As per the submission of Mr. Naik, learned advocate for the Mill in fact when the employer has challenged the status of the Complainant as an 'employee' under the B.I.R. Act and M.R.T.U. and P.U.L.P. Act, the labour Court should not have directed to deposit the monthly wages. As per the submission of Mr. Naik, the burden is one the Complainant that she is a workman/employee and not on the employer. In short, Mr. Naik canvassed that the labour Court has made wrong and incorrect observations in the impugned judgment that the Complainant has proved that

she is a workman/employee when the labour Judge has further observed that it being a mixed question of law and facts, can be decided finally on the basis of the evidence of both the parties and hence the learned labour Court should not have come to the conclusion that the Complainant is an 'employee' within the meaning of B.I.R. Act and M.R.T.U. and P.U.L.P. Act. In support of his submission Mr. Naik invited my attention to a judgment reported in *2001 II CLR p/155* (Northcote Nursing Home Pvt. *V/s.* Zarine H. Rahina (Dr.) (Mrs.) and another). On going through this judgment, it shows that there was a point for consideration under the M.R.T.U. and P.U.L.P. Act, 1971. A complaint was filed by the employee alleging unfair labour practice-Respondent denied that the Complainant is a workman-question is on whom lies the burden to prove that Complainant is a workman-Industrial Court held that burden lies on the Petitioner-Employer and he has to enter the witness box first-Hence Writ Petition by the employer. While setting aside the impugned order of the Industrial Court, it is held that initially the burden is on the Respondent employee to prove that she is workman under Sec. 2(s) of the Industrial Disputes Act and she has to enter the witness box first. Mr. Naik also relied on a judgment reported in *1990 II CLR page 56* (Management of Rangaswamy and Company *V/s.* D. V. Jagdish). In this case also there was a dispute in respect of removal from service of the Respondent Appellant disputed that 1st Respondent is "workman"- Labour Court directing payment of interim relief of Rs. 1,200 p.m. to first Respondent without deciding the question whether first Respondents is "workman". It is observed that the labour Court ought to have decided the question whether first Respondent is "workman" as preliminary issue of it was required to consider interim relief sought for by first Respondent, Mr. Naik further invited my attention to a case reported in *1994 II CLR 180* (Municipal Corporation of City of Amravati *V/s.* Ashok Ramkrishna Kamble and Others). In this case also there was termination of services of Junior Engineers on daily wages of Rs. 72 they filed complaint of unfair labour practice-Petitioner Corporation took defence that they are not employees under B.I.R. Act-The High Court remanded the proceeding to the labour Court in order to give an opportunity to the Respondents to bring on record material so as to prove the real nature of their work and wages, so that they can still be considered as employees within the meaning of BIR Act and can be covered under the umbrella of M.R.T.U. and P.U.L.P. Act. Thus relying on the aforesaid cases, Mr. Naik argued that the labour Court in the case in hand committed error in directing the employer to deposit monthly wages without deciding the issue whether the Complainant is a workman or not, as agitated in the affidavit-in-reply when particularly the burden was on the Complainant. Mr. Naik further submitted that the conclusion so drawn on the basis of the affidavit-in-reply that *prima-facie* case is made out by the Complainant and that *prima facie* she is a workman is erroneous and therefore he requested to set aside the impugned order passed by the labour Court.

10. On carefully going through the facts and circumstances of the case in hand, it is rather difficult for me to share the submission of Mr. S. M. Naik, learned Advocate for the Applicant in Revision Application (ULP) No. 187/2001. It is significant to note that the labour Court in the impugned judgment made observation that he has perused the nature of duties performed by the Complainant, as mentioned in the Complaint and also perused the nature of duties as explained by the Respondent in the affidavit-in-reply and *prima facie* he observed that the Respondent failed to establish that the Complainant was taking any decision and her decision is binding on the Management. In *prima facie* filed the Respondent failed to establish that the Complainant was supervising anybody's work or Complainant was doing managerial, administrative duties, etc. The said observation is no doubt based on the pleadings in the complaint and the affidavit-in-reply. It is important to note that the labour Court has also mentioned in para No. 6 of the impugned judgment that the issue of workman/employee is to be decided on the basis of evidence only, as it is a mixed question of law and facts and therefore, this issue can be decided finally at the time of final hearing on the basis of evidence of both the parties on record. However, the labour Court has expressed its opinion holding *prima facie.* Complainant to be an employee. I am aware that much was canvassed by Mr. Naik, learned Advocate for the employer that when the oral and documentary evidence is required to prove the issue of workman and burden is on the Complainant as per the cases

relied by him, there is no doubt that initial burden is on the Complainant to prove that she is a workman/employee. The said aspect, as observed by the labour Court, can be dealt with and decided at the time of final hearing of the complaint. The learned labour Court on the basis of the record available before it, observed that the Complainant has *prima facie* showed that she has a strong *prima facie* case for granting the interim relief, as mentioned in the Application Exh. U-2.

11. There is no dispute from the employer Mill that the Complainant was offered V.R.S. like other employees but the said offer was rejected by the Complainant and it is alleged by the Complainant that on account of the said refusal, her services have been terminated and therefore she has been victimised by adopting unfair labour practices. At the time of arguments, even Mr. S. M. Naik, learned Advocate for the Employer Mill canvassed that the VRS was offered to the Complainant and still that avenue is open, but she has declined to accept the same. Meaning thereby, non-acceptance of VRS has caused the Respondents to terminate the services of the Complainant. This aspect can be considered and dealt with at the time of hearing the main complaint and as to whether the employer has adopted unfair labour practice or not.

12. While deciding the Application for Interim Relief, the Court has to see whether the Complainant has proved *prima facie* strong case and the balance of convenience and irreparable loss. In the present case, the labour Court has simply ordered the Respondent to deposit the monthly wages of the Complainant in the Court from the date of the order till the disposal of the complaint. I don't find that by making such order, the labour Court has committed any error or illegality because the services of the Complainant have been abruptly terminated on 3rd January 2001 and therefore the Complainant has rushed to the labour Court. It is necessary to place on record that as per the submission of Mr. Deshpande, learned Advocate for the Original Complainant, the job of auditing performed by the Complainant is now given to Aneja Associates and therefore the question of running in losses of the employer mill does not arise. This aspect at the interim stage cannot be considered and if any opinion is expressed, that would amount to causing prejudice to either side. Hence, this can be decided at the time of hearing the Main Complaint.

13. Mr. Deshpande at the time of arguments, relied on the cases cited before the labour Court and particularly the case reported in *1988 I CLR 290 S. C.* (National Engg. Industries *V/s.* Shri Krishan Bhageria and Others). The substance of the said case-law has been reproduced by the labour Court in para No. 5 and it shows that in the said case there was a similar problem for consideration as to whether the Respondent No. 1 was working under the Appellant Company as Internal Auditor is a workman or not. On carefully going through the said citation, it shows that in the said case on considering the evidence recorded before the labour Court, it has been held that Respondent No. 1 is a workman and not a Supervisor and the said conclusion of the Division Bench was sustained. In the present case, yet the oral evidence of both the parties is to be recorded and therefore I don't find that the said case relied by Mr. Deshpande is at this stage of any assistance because the oral evidence is yet to commence. Mr. Deshpande also invited my attention to the cases reported in *1993 II CLR 1059* (R.M.M.S. *V/s.* K. B. Wagh, P. O. 11th labour Court and Others), *1993 I CLR 993* (Secretary to Government of Maharashtra *V/s.* Devendra Vithal Inds.), and thereby urged that in the Revision the interference of the Industrial Court is not called for when the powers u/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971 are limited.

14. On carefully scrutinising the facts and circumstances of the case in hand, I don't find that the labour Court has committed any error or mistake apparent on the face of the record to call for the interference of the Industrial Court u/s. 44 of the M.R.T.U. and P.U.L.P. Act. It is because the findings and observations of the labour Court are based on the affidavits filed by the parties. It is also to be noted that the labour Court has given a direction to the employer to deposit the monthly wages of the Complainant in the Court from the date of the order till disposal of the complaint and has taken care of not permitting the Complainant to withdraw the amount. I am aware that much was canvassed by Mr. Deshpande, learned Advocate for the

Complainant that particularly the labour Court should have allowed the withdrawal of the wages and he pressed for the said relief in the Revision, but I am unable to accept the same for the reason that depending upon the oral and documentary evidence of the parties regarding the Complainant as a workman or not, as referred earlier and whether unfair labour practice has been adopted by the employer or not, the said points can be dealt with and decided while disposing the Main Complaint as per the oral and documentary evidence that may be adduced by both the parties. Thus on carefully scrutinising the record and proceedings, I don't find that in both the Revision Applications, the parties have made out any ground for the interference of the Industrial Court to grant the respective reliefs, as stated in the Revision. Hence, I answer the Point No. 1 accordingly.

15. Before parting with the judgment, I am of the view that considering the legal points involved in the matter, if the complaint is expedited and made time-bound, it will meet the ends of justice. Similarly, the learned 5th labour Court has made observations and came to the conclusion that *prima facie* Complainant is a workman and hence Mr. Naik submitted that when such observation has been made by the labour Court at the interim stage, the complaint under the said circumstances before the said labour Court cannot be placed for final disposal. To thus submission, Mr. Deshpande, learned Advocate for the Complainant opposed stating that the observation of the labour Court is *prima facie,* based on the pleadings in the complaint and the affidavit-in-reply and therefore the matter cannot be withdrawn and transferred. After hearing the submission advanced by the learned Advocates for the parties, I am of the view that the complaint in question, on scrutinising the observations made while deciding Exh. U-2 on the point of workman, etc., deserves to be transferred by exercising the powers u/s. 45 of M.R.T.U. and P.U.L.P. Act, 1971 to another labour Court.

16. *Point No. 2* :— In view of the foregoing reasons and finding on Point No. 1, the order follows. :—

Order

Revision Application (ULP) Nos. 187/2001 and 209/2001 are dismissed.

Complaint (ULP) No. 67 of 2001 is withdrawn from the file of 5th labour Court, Mumbai and is transferred to the file of 9th labour Court, Mumbai presided by Shri A. H. Shingane and he is directed to dispose of the complaint by the end of July, 2002.

The aforesaid complaint to be placed on the board of 9th labour Court, Mumbai on *24th April 2002* and parties and their Advocates are directed to appear accordingly at 11 a.m. and Co-operate the concerned labour Court for expeditious disposal of the complaint within the time-limit stipulated here in above by not taking unwarranted adjournments.

No order as costs.

U. R. PATIL,
President,
Industrial Court, Mah., Mumbai.

Mumbai,
dated the 10th April 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai,
dated the 20th April 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

APPEAL (IC) No. 58 of 2001. IN APPLICATION (BIR) Nos. 118 to 145 and 147 to 149 of 1999.—Hemant Madhukar Gosavi, Koliwada, Vazira Naka, G/8, Jaymala Apartment, Borivali West, Mumbai-400 092.—*Appellant.*—*Versus*—(1) Century Textiles and Industries Limited, Pandurang Budhkar Marg, Worli, Mumbai-400 025. (2) The General Manager, Century Textiles and Industries Limited, Pandurang Budhkar Marg, Worli, Mumbai-400 025. (3) XIth labour Court, Mumbai.–*Respondents.*

In the matter of appeal under Sec. 84 of the BIR Act, 1946 against the Order dated 6th August 2001 passed by XIth labour Court, Mumbai, in Applications (BIR) Nos. 118-145 and 147-149 of 1999.

PRESENT.— M. L. Harpale, Member. Industrial Court, Mumbai.

Appearances.— Shri Engineer. Advocate for the Appellants.

Shri S. P. Singh Advocate for the Respondents.

Judgement and Order

1. The Appellant and other 30 concerned employees have filed the applications being Applications (BIR) Nos. 118 to 145 and 147 to 149 of 1999 separately, before the labour Court, Mumbai, for permanency and against the illegal deduction in permanent posts.

2. In these Applications under BIR Act, the trial Court granted interim-relief *vide* its Order passed below the application Exh. U-2 and thereby restrained the Opponents Nos. 1 and 2 from terminating their services without due process of law. Then, they filed common application Exh. U-8 for additional interim relief restraining the Opponents Nos. 1 and 2 from allotting them any work of lower grade than the work of trimmer and for other reliefs. On considering the said common it application, the say thereon and on considering the arguments advanced by both parties, the trial Judge decided the said common application Exh. U-8 by its order dated 6th August 2001. (Hereinafter the present Appellant and other concerned employees are referred to as the employees and the Opponents Nos. 1 and 2 are referred to as the Opponents).

3. Being aggrieved by the said Order dated 6th August 2001, passed below common application Exh. U-8 the Appellant has brought this appeal on behalf of all the employees on the grounds as set out in the appeal memo.

4. The fact depict from common application Exh. U-8 are as under :—

After the application Exh. U-2, the Opponents started harassing the employees (who have filed the applications under the BIR Act) and introducing illegal changes in their service conditions in violation of the agreement dated 8th August 1998. The Opponents did so with a view to restrain the employees from perusing their applications (BIR) and to compel them to withdraw the same. The Opponents are also trying to reduce the permanency complements without following due process of law and without permission of the appropriate Government. It is further contended that the Opponents also started forcing the employees to do the work of lower grade and of a bigari/unskilled begari in the lower pay scale. Thus, this action on the part of the Opponents amounts to change in the service conditions of the employees. It is further contended that the Opponents are refusing to give work to the employees, though the work is available. The Opponents also give work to the juniors to the employees and the employees are sent back with remark 'no work' or 'refused work' in their attendance cards. Thus, the employees have been adversely affected. Therefore the employees sent a letter dated 28th June 2001 to the Opponents and requested them to withdraw the said illegal change and to provide them the work of trimmer as per the agreement dated 8th August 1998. Further, some incidents of some employees are given in the application. Lastly, it is prayed for restraining the Opponents from allotting he employees any work of lower grade than the work of trimmer and also prayed for other reliefs.

5. The Opponents resisted the common application Exh. U-8 by filing their reply at Exh. C-8. They have also denied the allegations made against them and submitted that the employees have refused to accept alternate work by taking unfair advantage of the pendency of the applications (BIR). It is further contended that as per the agreement dated 8th August 1998 badli workers have to accept the work of other categories. Lastly, they prayed for dismissal of the said application Exh. U-8.

6. Heard the learned Advocates for both parties. On considering their arguments and material placed on record, the following points arise for my determination and I have recorded my findings thereon for the reasons stated below :—

Points	*Findings*
(*1*) Whether the trial Judge has rightly decided the point framed for determination of the application Exh. U-8 and rightly passed the final order ?	No.
(*2*) Wether it is necessary to interfere with the findings of the learned trial Judge and/or final order ?	Yes.
(*3*) What order ?	As per final order.

Reasons

7. It is not disputed that the employees are the *badli* workers, who are designated as export cimmco trimmers and they are divided into three groups *viz.* 'A', 'B' and 'C' as per the agreement dated 8th August 1998. They have filed the applications (BIR) against the Opponents, on the allegation that they are not made permanent from long time.

8. It is one of the contentions of the employees that after the application Exh. U-2 and/or the order passed thereunder, the Opponents started harassing them, by giving them the work of lower grade/grade of *bigari*. On this point, both the learned Advocates mostly relied on clauses Nos. 7 and 8 of the said agreement. The trial Judge has also discussed the same clauses in his order passed below the application Exh. U-8 and he has held that the employees are under the obligation to work in any category or post in the department, as directed by the Management, as per the agreement dated 8th August 1998. On perusal of clause No. 7 of the said agreement, it appears that the Opponents have given guarantee of work days to the *badli* workers mentioned in Annexure-A to the agreement, provided they will give production as mentioned in clause No. 1 of the said agreement. Further, the *badli* workers are divided into three groups, and they will be made permanent on the basis of the date of joining, when the vacancy will occur. Further, the *badli* workers in group have been provided with guarantee of 21 days work, 20 days work, and 16 days work in a month, as agreed in the said agreement, dated 8th August 1998. clause (8) of the said agreement is material, which is as under :—

> "To enable the Mill Company comply with the conditions to provide work as mentioned in clause No. 7 (*a*) above, it is agreed that the *badli* workers will have to work on any category or post in the department, as directed by the Management."

From the above clause, it appears that the Opponents have agreed that the *badli* workers, which includes the employees in the present case, will have to work on any category or post in the department, as directed by the Management. Therefore, one thing is clear that the trial Judge has rightly held that the employees will have to work in any category or post in the department as directed by the Management. If it is so, it does not appear to be improper on the part of the Opponents to ask the employees to work on any category, including the category of unskilled workman's grade or category of *bigari*.

9. The employees have given several instances which also shows that the Opponents are compelling them to work on the post of lower grade and on the wages for the lower grade. The Learned Advocate for the employees has submitted that specific instance/instances were given in the application Exh. U-8, but the trial Judge has not considered the same and the trial Judge has held in Para 20 of his order that these allegations can be decided on evidence to be led by the parties. On perusal of the application Exh. U-8 attached to the appeal memo, it appears that the Opponents refused to give work to one Uttam Bhima, Ticket No. 8586, though his juniors *viz.* Ashok, Ticket No. 8683 and Avadesh, Ticket No. 8601, were given the work of trimmer. Further, the Opponents forced the employee Hemant Madhukar Gosavi, Ticket No. 8460, Prakash Rajaram, Ticket No. 8461, Janardan Laxman Vartak, Ticket No. 8452 to work on lower grade jobs with a low pay scale. Thus, it appears that the trial Judge has not considered this aspect that the Opponents forced to work on lower grade with low pay scale and the Opponents refused to give work of trimmer to the senior, though available. As discussed above, the agreement dated 8th August 1998 shows that the employees have to work on any post in any category, as directed by the Management. However, the said agreement does not disclose that the employees are required to work on lower scale than the scale of their post of trimmer and the Opponents are authorised to give work of lower grade to the seniors though the work of trimmer is available. Since the trial Judge has not considered all these things and vaguely held that all these controversies with regard to the instances can be resolved on oral as well as documentary evidence to be led by the parties.

10. From the above discussions, it appears that the employees have to work on any category or post in the department, as directed by the Management, but they claimed the only work of trimmer. So far as the above fact is concerned, the employees have failed to make out a *prima facie* case. However, it appears that the agreement dated 8th August 1998 does not allow the Opponents to give work of lower grade to the seniors, if the work of trimmer is allow and to pay the scale of lower grade than the grade of the trimmer. So far as this aspect is concerned, the employees have made out a *prima facie* case. But the trial Judge has not considered these aspects.

11. The Learned Advocate for the Opponents has relied on the case of Western India Spg. and Mfg. Mills *V/s.* T. M. Mantri, Member, Industrial Court, Mumbai and others, reported in *2001 I CLR 1064 (Bom.)* and he has relied on some portion in Para 10 of the said decision, which is as under :—

> "Both these agreements have been arrived at by the parties under the mandatory provisions of the BIR Act after following the mandatory provisions laid down in the Act. All such agreements are required to be registered under Sec. 44 of the Act. Every registered agreement has binding effect on both the parties and any breach of a term of a registered agreement would attract the provisions of Sec. 46 of illegal change. A registered agreement, therefore, partakes the character of a statutory provisions."

Further, he has relied on some portion in Para 13, which shows that a registered agreement has equally a binding force of law under sec. 114 (*1*) of the Act. In the present case, the agreement dated 8th August 1998 is a registered agreement and the employees are not disputing the same. On the other hand, they are claiming their rights as per the said agreement. He has further relied on the case of MSRT Corporation *V/s.* Nanu Rama Verma reported in *2001 LAB IC 1536 (Bom).* This is on the point of powers of the Court in revision under Sec. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

12. He has also relied on the case of Singhraj Sevaswami *V/s.* M/s. Kamala Mills Ltd. and Others, reported in *1999 I CLR 766 (Bom).* In that case, the Petitioner was asked to work as a *bigari* though he was employed as helper. On the facts, Their Lordships have held that the work of *bigari* was equivalent to that of a helper. In the present case, there is no such question and the facts are different than the facts in the above case. He has also relied on the case of Municipal Corporation of Greater Bombay *V/s.* BEST Workers Union and others reported in *1994 I LLN 632 (Bom.).* Wherein, it is held that when the appeal to the Industrial Court is against the order of the Labour Court, the Industrial Court cannot in any event, have powers wider than Labour Court.

13. From the above discussions, it appears that the employees have made out a *prima facie* case on the aspect that they are entitled to work of trimmer as per the seniority if the work of trimmer is available, and they are entitled to the pay scale of their post. In the result, the Point Nos. (*1*) and (*2*) are hereby decided accordingly. With this, I proceed to pass the following order :—

Order

(1) Appeal (IC) No. 58 of 2001 is hereby partly allowed.

(2) The Order of the trial Judge dated 6th August 2001 is hereby set aside.

(3) The Respondents (Opponents) are hereby directed to give the work of trimmer to the employees as per seniority and in accordance with the agreement, whenever the work of trimmer is available.

(4) The Respondents (Opponents) are hereby further directed to pay the scale to the employees as fixed for their grade of Export Cimmco Trimmer.

(5) Appeal is hereby disposed of accordingly.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 18th March 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
dated the 3rd April 2002.

IN THE INDUSTRIAL COURT MAHARASHTRA AT MUMBAI

BEFORE SHRI P. B. SAWANT, MEMBER

REVISION APPLICATION (ULP) No. 1 of 2002.—(1) Municipal Corporation of Greater Mumbai, Municipal Commissioner, Chief Executive, Mahapalika Marg, Mumbai, (2) Chief Engineer (SO) Cement Godown, N. M. Joshi Marg, Byculla, Mumbai 400 013—*Applicants Versus* Shri Pramod Mahadeo Sakpal and Others, C/o. Municipal Workers' Union, Kamgar Karyalaya, Topiwala Lane, Mumbai 400 001— *Opponents.*

REVISION APPLICATION (ULP) No. 23 of 2002.—Shri Pramod Mahadeo Sakpal and Others, C/o. Municipal Workers' Union, Kamgar Karyalaya, Topiwala Lane, Mumbai 400 001— *Applicants Versus* (1) Municipal Corporation of Greater Mumbai, Represented by Municipal Commissioner, Chief Executive, Mahapalika Marg, Mumbai, (2) Chief Engineer (SO) Cement Godown, N. M. Joshi Marg, Byculla, Mumbai 400 013, (3) Shri S. K. Shalgaonkar, Presiding Officer, 11th Labour Court, Mumbai—*Opponents.*

CORAM.— Shri P. B. Sawant, Member.

Appearances.— Shri H. H. Madan, Advocate for the Applicant Corporation.

Shri M. S. Jambaulikar, Advocate and Shri S. V. Gole, for the Opponent workmen.

Judgement

1. Both these Revision Applications have arisen out of the judgment given by the Presiding Officer, 11th Labour Court (Shri S. K. Shalgaonkar), dated 21st November 2001 in Complaint (ULP) No. 617 of 2000. The Presiding Officer by his order, allowed the complaint with no order as to costs, by declaring that the Respondent Corporation has committed unfair labour practices enumerated *vide* item 1(*f*) of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, 1971 and directed the Respondent Corporation to allot these Complainant workmen the work which they were associated prior to 1st September 2000 and to pay them their earned wages. Being aggrieved and dissatisfied with the order passed by the Learned Presiding Officer, the Municipal Corporation has preferred Revision stating therein that the order is not just and proper and also not legal and, therefore, prayed for quashing the order in toto. The employee Shri Pramod M. Sakpal and others have also preferred subsequent Revision as they are also dissatisfied with the refusal to grant back wages to these employees. Therefore, it is prayed to quash the order to that extent and modify the order of reinstatement of these workers with full back wages. Since the revisions have arisen out of the same complaint and order thereunder and since both the parties have aggrieved and preferred the Revisions against the order passed by the Learned Presiding Officer, it is decided to dispose of both the Revisions by a common order. The fact in nutshell as being narrated before the Trial Court and this Court can be summarised as follows.

2. These 29 employees who were in the employment of the Municipal Corporation, Greater Mumbai have filed the complaint before the Labour Court alleging that the employer has followed unfair labour practices within the meaning of items 1(*a*), (*b*), (*d*) and (*f*) of Schedule-IV of the Act. They have pointed out that they were recruited on their filing application and started working as Mazdoors wherever they were required in the Pumping Station under Respondent No. 2. However, in the year 1994-95, the said workers were bifercated considering their educational qualifications and were asked to go under medical examination. By that process, some of them were made permanent and they started getting the Salary inclusive of D. A. and all other allowances admissible to the post. However, from 1st September 2000, the Respondent orally directed the workmen that they should not report for work while the other workmen asked to work overtime. Those were paid heavy overtime wages etc. It is the contention of the Complainant that such act on the part of the Corporation amounts to termination of service in contravention of the legal provisions. The Standing Orders are applicable. The

Respondent is covered under the Factories Act. The Respondents have also committed unfair labour practice under items 9 and 10 of Schedule-IV of the Act. At present, there are 66 vacant positions. Therefore, the employees are seeking permanency in the posts and filed the present complaint for a declaration and with a direction that the employees be allowed to report for duty and to do the work which they were doing previously and directions for the compensation towards loss of wages from September, 2000 onwards.

3. On perusal of the application, affidavit and documents on record, the notice was issued to the Respondent. The Respondent appeared and filed written statement *vide* Exh. C-11 denying all the adverse allegations contending *inter alia* that the contents in the complaint are false and frivolous and thereby prayed for dismissal of the complaint. It is denied that the Respondent have followed unfair labour practice. It is also denied that the Complainant employees were employed in Pumping Station. There is Sewage Operation department in the Corporation under the head of Chief Engineer. The said department is devided into sub-division. There is a high incident of absenteesm. Thereby a waiting list was prepared and temporary sanction was granted by the Corporation for such non-scheduled posts. It is the contention of the Respondent that there was a temporary requirement of labourers in the Pumping Station. Therefore, out of the waiting list, the employees having qualification up to 9th standard passed were engaged for the working in the Pumping Station to do the work of lifting, cleaning etc. Their appointment was on *ad hoc* basis. However, the Municipal Commissioner has issued the order that no vacancy should be filled in thereby the persons who were taken on *ad hoc* basis were required to be discontinued.

4. It is further pointed out that those persons are discontinued. Their names on the waiting list are continued and kept as it is. It is denied that the employees taken on *ad hoc* basis should be regularised or made permanent. According to the Respondents, the services of these *ad hoc* employees are utilised by giving them perodical break for 1 to 3 days after 3 months and after every break those employees will go back to the Labour Officer's waiting list or to the main Sewage waiting list. By this procedure, the Respondents have dealt with these employees. It is the contention that the labours are not diverted their segregation for work for Pumping Station in the year 1997 and not earlier to that. Therefore, it is prayed that no relief is attributable to these employees. Therefore, it is prayed that the complaint be dismissed with costs.

5. On these rival pleadings, Learned Labour Judge was pleased to allow the parties to lead evidence. After perusing the oral and documentary evidence led before the Court, the Presiding Officer came to the conclusion that there is material available on record to hold that termination of service of these aggrieved employees is with undue haste as contemplated under item 1(f) of Schedule-IV of the Act. Accordingly, he gave declaration alongwith the directions.

6. As stated earlier, the aggrieved parties have preferred respective revisions and it is the contention of the Corporation that there is patent error of law in the order passed by the Trial Court which has resulted into a manifest injustice. The Trial Court has not applied its mind to the real controversy in the parties. It is pointed out that mere discontinuation of service will not amount to termination of service of the Complainant employees. The decision of discontinuation was taken in the best interest of the Corporation in view of the financial crisis and, therfore, the Trial Court has made error apparent by sitting in judgment over the managerial and administrative wisdom and orders passed by the Corporation. It is also pointed out that these Complainant employees are not coming from backward community. Therefore, they are not fulfilling criteria giving them work. Even if in the alternative, it is pointed out that there is no compliance of Sec. 25-F, the question of giving direction would not have arisen. Therefore, the Trial Court has committed error apparent in granting such relief. Therefore, it is prayed that the Revision be allowed and impugned order be quashed and set aside.

7. As again this, the Revision Petitioner in Revision Application (ULP) No. 23 of 2002 has also resisted the order on the ground that the order is contrary to the law. By not granting full back wages, expressed the non-application of mind of the Trial Court which has caused injustice and prejudice to the employees. Therefore, it is prayed that the order be quashed to the extent of grant of back wages.

8. On the above rival submissions and considering the points raised, following points arise for my determination :—

POINTS	*FINDINGS*
(1) Whether it is proved that the Trial Court has made error apparent by giving a declaration of following of unfair labour practice under Item 1(*f*) of Sch. IV with the hands of the Respondents ?	Partly yes
(2) Whether it is proved that the Trial Court has committed error in giving directions to the Respondent for providing work to the employees ?	Not proved.
(3) Whether it is proved that the Trial Court has committed error in not granting full back wages to these employees ?	Partly proved.
(4) What order ?	As per final order.

Reasons

9. *Point No. 1.*—Before dealing with the complaint, the Trial Court has considered the interim relief application Exh. U-2 and directed to provide the work to these employees on priority basis as well as, as per the exigency of work. The said order has been set aside by the Industrial Court in Revision Application (ULP) No. 187 of 2000 and directions were given to expediate the hearing within the period of six months. While giving such directions, the Industrial Court has found that the trial Court has committed error as at the interim stage, without allowing the parties to lead oral and documentary evidence, the directions were given. When the matter has come up before this Court in the Revision, it is now required to be evaluated the very inception.

10. Referring to the continuation in the complaint itself. If it is admitted position that these are the employees who are recruited by the Corporation for preparing a waiting list. The waiting list was kept with the Labour Officer and as per the exigency of the work, they were sent to complete the work. By virtue of this process, the evidence on record reflected that they have completed more than a year of service. The trial Court has referred to this particular aspect contedning *interalia* that the services rendered by these employees have to be construed within the meaning of Sec. 25B of the Industrial Disputes Act. The text used under Sec. 25B lays down that :—

> "The workmen shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of service..... which is not due to any fault on the part of the workman."

The Deeming Section under Sub-clause (2) of Section refers to continuous service for the period of 240 days and, therefore, the record as put up before the Trial Court needs to be referred to. The Trial Court has made an endure to refer to the various departments as set up under the control of the Municipal Corporation wherever the Pumping Stations are installed and the services of these employees were being utilised. By virtue of their doing the work, it is the averments of these employees that they have completed more than 300 days service in a year. The chart Exh. C-1 relied on by the Respondent indicates that in the year 1998, 1999 and 2000, these employees have worked more than 240 days. So far as 1998 and 1999 are concerned while the data for the year January, 2000 to August, 2000, it disclosed that they have worked less than 240 days barring one employee Shri Ravi Shankar Walunj. The chart pertaining to vacancies and availability of posts in the Division Office is on record construing the real set of facts which might have arisen for issuing the circularly order dated 19th August 2000 Exh. C-13. By virtue of the said order, Badli or temporary employment was prohibited and the same circular has resulted into stopping the allotment of work to these employees. It is pertinent to note that the Executive Engineer of the Corporation has made a proposal that if the orders of reduction in strength of the employees has issued by the Commissioner of Corporation are

being followed. It may create a case in the schedule of the work to be completed in the Pumping Stations at various places may get disturbed. Therefore, it is requested that those who are on the waiting list which was prepared earlier be allowed to utilise the service to avoid any further anomaly in the situation.

11. While referring to the situation, the conclusion drawn by the Trial Court that there was need of work and that there was no over strength so far as these employees are concerned appears to be cogent. The situation clearly indicates that availability of work was the main criteria for considering the entire situation and, therefore, once it is transpired that in the Pumping Stations, the work is available, the said availability of work was required to be complied with available strength. By this proposition, if an arrangement is made for complying the work load with the existing strength then the abrupt stoppage of work without following due process of law was definitely a question which was essentially to be raised. The same question has been raised in the complaint itself. The trial Court has taken a long recourse of giving observation of this aspect and I have not found that he has committed any error apparent in coming to the conclusion of having availability of work.

12. Coming back to the situation, the status of these employees apparently is of a temporary employees. By virtue of their tenure with the Corporation, they have completed the requisite period of 240 days. Admittedly, no extra posts are being sanctioned nor efforts are being made for increasing the total strength of the manual labour in the Pumping Stations. However, the situation on record was indication regarding the requirement of the strength covering these employees which indicates the availability of work which was on the basis of the total strength available in hand with the Respondent Corporation. The facts on record, therefore, were properly being construed by the trial Court and has rightly been observed in his observation.

13. Before referring to the various other aspects so far as continuous service rendered by the employees are concerned, it is necessary to refer to the view expressed by the Higher Appellate Courts and Hon'ble Apex Court so far as position of daily wages are concerned. In a case of *Suptd. Engineer, Urdhwa Painganga Project Circle and Another* V/s. *Yavatmal Zilla Raste and Others 1992-II-CLR-1106.* Hon'ble Division Bench have concentrated on the completion of work referring to the days they have rendered services. Those workers were found to have completed 240 days during calendar year and their services were terminated without one month's notice or pay in lieu of notice. Such terminating of service is held to be bad in law. The question regarding the *bonafide* action of the employer when was raised before Hon'ble Their Lordship. Their Lordships have observed that :—

> "The motive or mensia is not essential ingredients for holding the employer responsible for indulging in or to have indulged any unfair labour practice. It is not necessary that motive must precede or should be the basis for declaring an act of unfair labour practice."

Referring to these observations and by noting the facts it appears that precautionary measures are being taken by the Commissioner of the Corporation to utilise the minimum man power in a limited fund. Admittedly, the business carried out by the Corporation depends upon the available funds and while referring to the available funds, the Municipal Commissioner has to man the business of the Corporation within that frame work. Therefore, though the measures taken for reallocating or relocating the strength of the employees available with the Corporation are with *bonafide* belief to save the money or increase the financial position of the Corporation. The same does not permit the Corporation for non-compliance of the legal proposition as envisaged under the Central Act. The fact in the case in hand, therefore, indicates that when these employees have rendered a continuous service, they have been stopped from attending the duty. The severance of such relation by way of abrupt action that too without following the provisions under Sec. 25F of the Industrial Disputes Act *interalia* establishes that there is a haste in the action of the Corporation for keeping these employees out of work. The learned Trial Judge, therefore, has right in construing this fact and has rightly come to the conclusion that the employer has high-handedly kept these employees without work.

14. The wording of term "retrenchment" has been construed by the Hon'ble Apex Court in a case of *Punjab Lal Devt. and Reclamation Corporation Ltd.* V/s. *Presiding Officer, Labour Court, 1990-II-LLJ-70.* Hon'ble Apex Court has observed that the expression "retrenchment" is not to be understood in its narrow, natural and contextual meaning to mean termination of service of workmen for any reason whatsoever. The exclusions from the term "retrenchment" under Sec. 2(oo), therefore, has to be interpreted as because the reasons for termination which are excluded are defined by Sec. 2(oo). The surplus of the employee therefore, was the main criteria for prohibiting them for getting the work from the Corporation. Therefore, the definition of retrenchment has envisaged under Sec. 2(oo) refers to the termination by the employer of the services of the workman for any reason whatsoever other wise than punishment inflicted..... squarely lays down that even restraining the employee from attending the duty shall fall within the criteria. The question so far as rendering of service is concerned, the preceding 12 months of the date when the order was issued about restraining these employees from doing the work in the Pumping Stations will have to be scrutinised on the basis of the attendance-sheet and other record produced by the parties. This scrutiny has been done by the trial Court though not reflecting elaborately in his order but the conclusions can be said to have that he has made as endure to have looked into the said aspect.

15. Therefore, the span as rendered by these employees will have to be seen throughout the observation of Hon'ble Apex Court in a case of *Surendra Kumar Verma and Others* V/s. *Central Government Industrial Tribunal, 1981-I-LLJ-386.* The observation relate to consideration of reinstatement of employees with full back wages and the aspect will be considered later on but at this stage, the observation pertaining to holding these employees having rendered continuous service within the meaning of Sec. 25B has been taken into consideration. In that context, the trial Court has rightly found out that these employees were in the service and have rendered 240 days continuous service. As contemplated under Sec. 25F what is required to be seen in the continuous service and not to the aspect of the fulfillment of category of employees as envisaged in the submission for and on behalf of the Corporation. It is pointed out that these 27 employees are not complying with the requirement of their being a reserve category employees. Therefore, once it is transpired that the employees having rendered 240 days service, the termination of service has to be by resorting to Sec. 25. This position has been taken in to consideration by the trial Court and I have found that there is no error in his coming to the conclusion that the termination is by way of haste.

16. Learned Advocate Shri Madan has relied on the observation in a case of *U.P.S.R.T. Corporation* V/s. *Vijay Kumar Gupta, 2002 (92) FLR-770.* Hon'ble Their Lordships have ruled that the candidate in the merit list has no indefeasible right to appointment even if the vacancy exist and ultimately observed that :—

> "We fail to understand as to how the policy decision of the Government refraining from making any recruitment or imposing a ban in respect thereof can even be challenged."

Here in this case, the Corporation appears to have taken the shelter of the order of the Municipal Commissioner and thereby asked these employees being the members of the Complainant union for not to report for work. Such abrupt termination is being challenged as there is no prerequisite compliance as envisaged by the statute. The decision taken by the Commissioner has not been challenged. Therefore, even though there was a direction, the mode adopted to follow the direct by the Corporation was not legal and proper. Therefore, the Trial Court has rightly construed the position and thereby has rightly directed the Corporation to allot the work. The consequence of non-compliance of Sec. 25F, therefore, resulted into.

17. Learned Advocate Shri madan for the Corporation has pointed out that since the candidates from B. C. category were not available, these employees were appointed 9th the vacancy on *adhoc* basis. They all are from advance class. They were given breaks after every three months to signify that they are not regular and permanent employees. These submissions,

therefore, will not stand in view of the observation of Hon'ble Apex Court in a case of *Surendra Kumar Verma and Others* V/s. *Central Government Industrial Tribunal, 1981-I-LLJ-386 (Supra).* Admittedly, the employees were not given casual leave and other allowances and benefits accuring from the service as being accrued by those who are being absorbed as a permanent employees. Referring to this aspect, the permanency as sought for was admittedly, not the question before the Trial Court as the Trial Court was not seized with the jurisdiction to grant such permanency. From the entire record which was placed before the Trial Court, the Trial Court has come to the conclusion that these employees are having rendered continuous service. I have also found that there is no error apparent in coming to such conclusion. Therefore, the reasultant out come of such observation is of holding the termination as illegal. Therefore, the declaration given by the Trial Court does not appear to be without application of mind. The Trial Court has given proper consideration and has passed the orders apparently for providing work to these employees. Hence, I have found that the order to that effect deserves to be maintained.

18. So far as contention regarding denial of back wages are concerned Learned Advocate Shri Jambaulikar and learned representative Shri Gole have pointed out that there was no proper reason for the Trial Court for denial of the back wages and general rule is that every reinstatement should be followed with back wages has been departed with by the Trial Court. The question of interpretation of back wages or reinstatement will have to be construed in its true sense because the reinstatement always denotes with restoring the original position. The original position is and will be referring to the nature of services rendered by these persons. These employees were temporary being recruited in view of the exigency of work in the Pumping Station. Their remaining in the waiting list has not changed the status till the relevant declaration to that effect has been given by the Competent Court. The record does not show that these employees have approached the Industrial Court for permanency till the complaint was decided. Therefore, the Trial Court was found to be within its appropriate rights for construing their position by remaining adhere to the position that their original position is to be restored as they have been deprived of work as in place of them, the employees who have absorbed on permanent basis are required to do the overtime work on some occasion more than 48 hours. This position cannot be enlighten more because what has been construed by the Trial Court is only to be seen from the angle whether such considerations are legal or proper. In the given circumstances. While in Revision, the Industrial Court has to restricted itself as it cannot reappraise the entire evidence and come to the different conclusion. The role of the Industrial Court is only to see whether there is any error apparent in the finding of the Trial Court or whether there is any misleading of facts or misapplication of law. In a case of *Vithal Gatlu Marathe* V/s. *Maharashtra State Road Transport Corporation and Others 1995-I-CLR-854* Hon'ble our High Court has made it clear that the Industrial Court cannot reappreciate the evidence and overturn the finding of fact, however, erroneous those findings may be. The trail Court in this regard has observed while answering to issue No. 2 that for want of *iota* of evidence, they are not entitled to be granted with relief. Obviously, what evidence was expected by the Trial Court is nowhere being disclosed. The word used while drafting issue No. 2 is also by using the word "compensation" or "loss of wages" and not the word "back wages" or "continuity of service". Therefore, the Trial Court has only construed to pass an order of directing the Respondent Corporation to allot the work to these employees.

19. Shri Gole, therefore, has pointed out that once the Court has come to the conclusion that there is a breach of Section 25F, the consequential benefits are to be awarded. Therefore, so far as directions to provide work is concerned, I have held that there is no reason to interfere. So far as non-payment of intervening period is concerned, the Trial Court has committed error in not giving proper reasoning so far as his refusal to pay those persons' wages. The loss of wages, therefore, was apparent because of hasty action taken by the employer. In the absence of any cogent evidence, the observation of the trial Court deserves to be interfered.

20. The Trial Court has pointed out that the reliefs to be granted only permissible under the provisions of M.R.T.U. and P.U.L.P. Act, 1971. Thus, for want to *iota* of evidence with reference to issue No. 2 in favour of the Complainant, it is held that since they failed to prove that they are not entitled to be granted with the reliefs they prayed for *vide* prayed clause 10(d) of Exh. U-1. By these observations, the learned trial Judge has rejected the prayer for grant of wages to the employees. Admittedly, these observations show that the Complainant has not led any evidence. The evidence as enunciated by law it that of gainful employment of the employees during he intermitant idle period. In such circumstances, the burden lies on the employer to establish that the employee was gainfully employed during he the intermitant idle period. However, the law also imposes a burden on the employee to explain his source of income if any. I have perused the evidence of Shri Pramod Sakpal led before the Trial Court. There is nothing in the evidence so far as the sources of income of the employees are concerned, not there is anything in the evidence of Shri Gaonkar. Therefore, whatever contentions expressed by the trial Court that there is no evidence on that count is correct.

21. Now considering the legality and propriety of the order is concerned, the conclusion drawn by the trial Court for denying the entire back wages to these employees appears to be only on the count that there is no evidence. However, once the Trial Court has come to the conclusion that termination is illegal, the normal rule could have been followed by remaining adhere to own discretion restraining him. In a case of *Surendra Kumar Varma 1981-I-LLJ-386 (Supra).* Hon'ble Apex Court in para 6 has pointed out that :—

> "There may be exceptional circumstances which make it impossible or wholly inequitable *vis-a-vis* the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums, the workmen concerned might have secured better or other employment elsewhere and so on. In such situation, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases, the Court may mould the relief but, ordinarily the relief to be awarded must be reinstatement with full back wages."

In a case of *Pandurang Nanasaheb Jagadale* V/s. *Chairman and Others 1992-II-CLR-532,* Hon'ble our High Court has observed that normal rule cannot be departed with once the dismissal order is found illegal and reinstatement is granted to the employee, the same should be followed by payment of full back wages. The order, therefore, of the Trial Court in the context of the above observation has to be subjected to an interference. The Trial Court has made error apparent in not using his discretion nor making any comment so far as denying entire back wages are concerned. Therefore, while correcting the said part of the order of the Trial Court is concerned, I have considered the observation of Hon'ble Apex Court and has found that the employees were from waiting list though by virtue of the absence of the employees, these employees on waiting list were getting work, it was no where made clear that such vacancy was falling due through out. Even if these employees were getting the work in most of the working days in a month, it will not change their original status as the employees from waiting list. Therefore, it cannot be assumed that if these employees would have been continued, they would have got the work for the entire month. The other side of the matter is that the employer is a Municipal Corporation rendering civic services to the Tax-payers citizens of Mumbai. The financial provision for extending the amenities to the citizens are depending upon the cash flow in the Treasury of the Corporation. If weight-log of the total back wages of these 26 to 29 employees is imposed on the Corporation, then the amount which is required to be paid to these employees would be out of available funds which may ultimately be resulted into curtailing the civic amenities to some extent. Keeping in mind, this anomoly which may occur as a repurcation of the order of granting full back wages, I have found that it will be just for this Court to correct the finding of the Trial Court by directing the Respondent Corporation to pay 50% of the total back wages from the date of their discontinuation from the service till the date of order of the Trial Court.

22. Considering all these submissions, I am of the view to partly allow the Revision Application filed by these employees by modifying the order passed by the Trial Court to the extent of back wages only by directing the Respondent Municipal Corporation to pay 50 Per cent of the back wages. Having regard to all these contentions, I have given my findings to the points raised accordingly and pass the following order :—

Order

(*i*) The Revision Application (ULP) No. 1 of 2002 filed by the Respondent Municipal Corporation, original Respondent is hereby dismissed.

(*ii*) The Revision Application (ULP) No. 23 of 2002 filed by the original Complainants is partly allowed.

(*iii*) The order passed by the Trial Court is modified as below.

(*iv*) The Respondents are directed to pay 50 Percent of the wages at the rate of last drawn wages from the date of discontinuation of practice of utilising the service of these employees till the date of order passed by the Trial Court.

(*v*) The order of paying 50 Percent of the back wages shall be effected on or before 1st June, 2002.

In the circumstances, parties are left to bear their own costs.

Record and proceedings called from the Trial Court be sent back forthwith.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Mumbai,
dated the 12th April 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
dated 29th April 2002.

BEFORE SHRI R. U. INGULE, MEMBER INDUSTRIAL COURT MAHARASHTRA AT MUMBAI

COMPLAINT (ULP) No. 480 of 2001.—Voltas Employees Union, 19, J. N. Heredia Marg, Ballard Estate, Mumbai 400 001.—*Complainant.*—*Versus*—(1) M/s.Voltas Limited, 19, J. N. Heredia Marg, Ballard Estate, Mumbai 400 001. (2) Mr. Anil Gole, Corporate General Manager, Voltas Limited. (3) Mr. G. T. Kudalkar, General Manager (H.R.), Voltas Limited.—*Respondents.*

In the matter of Complaint of Unfair Labour Practice under Item 1 of Sch. II and Items 9 and 10 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri R. U. Ingule, Member.

Appearances.— Shri B. K. Hegde, Ld. Advocate for the Complainant.
Shri P. N. Salgaonkar, Ld. Advocate for the Respondents.

Order

(3rd April, 2002)

This Complaint has been preferred u/s. 28 read with Item 1 of Sch. II and Items 9 and 10 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, 1971 (for short, 'M.R.T.U. and P.U.L.P. Act') *interalia* on the grounds that the Complainant Union has been functioning in the establishment of the Respondent Company, representing employees employed by it in Mumbai and at Thane for more than last 52 years. The Respondent Company has been a Public Limited Company engaged in the business of manufacturing and distributing of various Engineering, Chemical and Consumer durable items. The service conditions of the employees employed by the Respondent Company in the Administrative Office at Mumbai and at factory at Chinchpokli and engaged in the Main Plant at Thane, have been governed by the settlements, agreements, MOUs, Standing Orders, etc. In order to drive the employees to opt for Voluntary Retirement Scheme (for short, 'VRS'), the Respondent Company has been indulging into various harassing tactics. In protest, the Complainant Union has been resorting to peaceful agitations at Main Plant-Thane, Mumbai and Chinchpokli establishment. On 18th June 2001 the member-employees of the Complainant Union working in its all establishments in Mumbai and Main Plant at Thane resorted to 1 hour strike at the end of shift and office hours and thereafter on 22nd June 2001. However, prior to resorting to such strike for 1 end hours in hours shift and office the concerned employees have discharge their normal duties and gave normal production and services to the Respondent. However, by restoring to arbitrary and illegal action, the Respondent Company has deducted the entire day's wages/salary on 18th June 2001 and 22nd June 2001, thereby indulged into unfair labour practice prescribed under Items 9 and 10 of Schedule-IV. The wages to be paid to the employees have been treated as property of the employees under Art. 300A of the Constitution of this Land. The Respondent Company has resorted to such illegal act in order to coerce the member-employees of the Complainant Union to give up their agitation against the Respondent Company and thereby indulged into unfair labour practice under Item 1 of Schedule-II. Similar complaints have been pending on the file of this Court challenging such arbitrary and illegal action on the part of the Respondent Company to deduct the wages and hence a prayer to declare unfair labour practices and a direction to pay full day's wages to all employees working in Mumbai establishments and Thane Main Plant.

2. The Respondent Company by filing a Written Statement at Exh. C-5 has resisted the contentions raised by the Complainant *interalia* on the grounds that the Complainant Union has resorted to frequent strikes in the year 2000-2001. The member-employees of the Complainant Union had resorted to strike for one hour at the end of each shift on 18th June 2001 and 22nd June 2001 illegally. The President of the Complainant Union Shri M. P. Deshmukh and their General Secretary Mr. Joshi had indulged into a serious acts of misconduct, therefore, served with a charge-sheets in accordance with the Certified Standing Orders. It is, therefore, the member-employees of the Complainant Union have resorted to illegal strike in order to

pressurise and coerce the Respondent Company. The partial strike resorted to by the employees on 18th June 2001 and 22nd June 2001 are in the nature of part performance of contract of employment which has not been permissible under the provisions of law. The contract of employment between the Respondent Company and the employees are for performing whole day's work and not for part of the day. Therefore, the employees are not entitled to wages for the whole day on account of their resorting to illegal strike even for one hour at the end of shift. No prior notice of 14 days envisaged under the M.R.T.U. and P.U.L.P. Act was served on the Respondent Company. Therefore, the strikes have been illegal *per-se*. The illegal strike resorted to by the employees has paralysed the whole production and administration of the Company, causing serious damage. The Hon'ble Supreme Court of India has held the part performance of contract being not performance of contract at all, and therefore the workman are not entitled for the wages on these days. Financial loss caused to the Respondent Company on account of such illegal strike has been in lacs of rupees and also damaging the reputation and having adverse effect on the customers. Due to illegal strike, the Respondent's entire revival plan has been jeoparadised. The Respondent Company has not been causing any hindrance and impediments in the operation of the Complainant Union as it has been functioning from more than 50 years in its establishment. There is no any intention and plan on the part of the Respondent Company to drive any employee under coercion and opt for VRS. The VRS has been at the free violation of the concerned employees. As no unfair labour practice have been adopted by the Respondent Company, therefore, a prayer for dismissal of the Complaint.

3. In the aforesaid rival contentions, following issues have been framed under Exh. O-2 and my findings thereon, for the reasons given below therein, are as under :—

Issues	*Findings*
(1) Whether the Complainant has proved that the Respondents have engaged in and are continuing to engage in unfair labour practices prescribed under Item 1 of Sch. II and Items 9 and 10 of Schedule-IV of the M. R. T. U. and P.U.L.P. Act ?	Yes, under Item 9 and 10.
(2) Whether the Complainant is entitled to the relief claimed in the complaint ?	Yes.
(3) What order ?	Please, see final order.

Reasons

4. I have heard the learned Advocate Shri B. K. Hegde for the Complainant Union and learned Advocate Shri P. N. Salgaonkar for the Respondent Company at length.

5. At the outset, I observe that undisputedly the member-employees of the Complainant Union have resorted to a partial token strike for 1 hour at the end of the shift hourson 18th June 2001 and 22nd June 2001. Admittedly, the Respondent Company had declared its intention to deduct entire day's wages of the employees for their resorting to one hour strike on 18th June 2001 and 22nd June 2001. The learned Advocate Shri B. K. Hegde for the Complainant Union has vehemently submitted that the said strike was partial for a period of one hour at the end of shift and office hours. Prior to it, the workers had discharged their concerned day's normal work. It is in protest, its member-employees have resorted to a partial token strike for which the Company cannot illegally and arbitrarily proceed to deduct entire day's wages for 18th June 2001 and 22nd June 2001 especially when it has accepted and acquiesced the work rendered by its member-employees on these days of strike.

6. While countering the said argument, the learned Advocate Shri P. N. Salgaonkar has urged that the partial strike resorted to by the employees on 18th June 2001 and 22nd June 2001 have been in the nature of part performance of contract of employment which has not been permissible under the provisions of law. It is, therefore, such part performance of contract on the part of the employees does not amount to be performance at all. Hence, the employees are not entitled for wages for the entire day on 18th June 2001 and 22nd June 2001. I thus find that the controversy to be redressed with in the trial of the instant Complaint, moves in a very narrow compass.

7. The learned Advocate Shri P. N. Salgaonkar for but tressing his contentions that the part performance of contract has not been performance at all, has pressed into service the decisions of Hon'ble Division Bench of the Supreme Court in a case of Bank Of India *V/s.* T. S. Kelawala and Others (*1990 I CLR p/748*) and that in the case of Syndicate Bank and another *V/s.* K. Umesh Nayak and Others (*1994 II CLR p/753*) decided by the Constitutional Bench of the Hon'ble Apex Court consisting of five Judges. The learned Advocate Shri P. N. Salgaonkar placing a heavy reliance on the ratios laid down in these two celebrated judgments has submitted that the settled law position has been that the part performance of contract has not been performance at all in the eyes of law. On going through these 2 citations, I however, find the reliance placed by the learned Advocate Shri P. N. Salgaonkar being totally misconceived and misplaced one.

8. In the case of Syndicate Bank (*Supra*) I observe that the Constitutional Bench of the Apex Court has in depth gone into the ratio laid down by the Hon'ble Division Bench in the case of T. S. Kelawala (*Supra*). While concluding its observations, the Hon'ble Constitutional Bench of the Apex Court has *interalia* observed in paragraph No. 36 that as in the case of T. S. Kelawala (*Supra*), in the case of Syndicate Bank also the question whether the strike was justified or not was not raised. No argument was also advanced on behalf of the employees on the said issue in the case of Syndicate Bank. It is therefore the law laid down by the Hon'ble Division Bench in the case of T. S. Kelawala (*Supra*) has been approved by the Hon'ble Constitutional Bench being applicable. In view of such clear-cut observations rendered by the Hon'ble Constitutional Bench of the Apex Court, I proceed to advert to the ratio laid down by the Hon'ble Divisions Bench of the Supreme Court in the case of T. S. Kelawala (*Supra*).

9. On going through the judgment of T. S. Kelawala's case (*Supra*), I observe that their Lordships were seized with the controversy, whether an employer has a right to deduct wages unilaterally and without holding an enquiry for the period the employees go on strike or resort to go slow. In the said case, the employees had gone on four hour's strike from the begining of the working hours on 29th December 1977. The employees had resumed their work on that day after the strike hours and the Bank did not prevent them from doing so. Thereafter the Bank had issued a circular directing its Manager and Agents to deduct full day's salary of those of the employees who had participated in the strike. I further observe that their Lordships on adverting to a plethora of citations have laid down the extract of the principles emanating therefrom in paragarph No. 22. It has been *interalia* observed that where the Contract, Standing Orders or the Service Rules/Regulations are silent on the subject, the Management has a power to deduct wages for absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed. Whether the deduction from wages will be *pro-rata* for the period of absence only or will be for a longer period, will depend upon the facts and circumstances of each case, such as whether there was any work to be done in the said period, whether there work was in fact done and whether it was accepted and acquiesced in, etc. In paragraph No. 23 their Lordships have further observed that the employees not only should attend the place of work, but must put in the work allotted to them. It is for the work and not for their mere attendance that the wages/salaries are paid. I observed that their Lordships while finding their support to the view that the wages are payable *pro-rata* for the

work done and hence detectable for the work not done, have adverted to the provisions provided under the Payment of Wages Act u/s. 2 (rr) and that u/s. 2(q) in paragraph No. 25. I observe that in paragraph No. 28 their Lordship have reiterated the justness and properness in *pro-rata* deduction of wages, *interalia* observing that the *pro-rata* deduction of wages is not an unreasonable exercise of power of such occasions. Whether on such occasions the wages are deductable at all and to what extent will, however, depend on the facts of each case. The employees may strike only for some hours, but there is no work for the rest of the day, as occurred in T. S. Kelawala's case (*Supra*), then the employer may be justified in deducting salary for the whole day. There could be a case where the employees may put in work after the striking hours and the employer may accept it or acquiesce in it, in such case the employer may not be entitled to deduct wages at all or be entitled to deduct them only for the hours of strike.

10. In my considered view, the lucid and eloquent observations rendered by their Lordships of the Hon'ble Supreme Court adverted to above, manifest the want of any base and foundation for the arguments advanced on behalf of Respondent Company that the part-performance of the contract is no performance at all in the eyes of law. In my considered view, if for a part of the day employees have worked and the same has been accepted and acquiesced into by the Company, then for such part performance also the employees would be entitled to the wages on *pro-rata* basis. The extent of such payment of wages would depend on the facts and circumstances of each case.

11. In view of the ratio laid down by their Lordships of the Supreme Court in a case of T. S. Kelawala (*Supra*), now I proceed to assess the oral and documentary evidence that placed on file by the parties to the litigation in order to ascertain whether for the part-performance of the contract of service by the employees on 18th June 2001 and 22nd June 2001, the Respondent Company has been justified to deduct the entire day's wages. This controversy I would be required to resolve on ascertaining whether on the days of strike *i.e.* 18th June 2001 and 22nd June 2001, the employees have rendered services to the Respondent Company, whether the same has been accepted and acquiesced into by the later. In this context, I may observe that in the entire Written Statement, the Respondent Company has not denied the renderance of services by the employees on 18th June 2001 and 22nd June 2001. However, main stance of the Respondent Company, in denying wages to the employees on those days was that the part performance of the contract has not been performance at all. To reiterate, admittedly on rendering services for 7 hours on 18th June 2001 and 22nd June 2001, at the ending 8th hours on in a shift and office-hours, the employees had resorted to partial token strike to register their protest against the alleged atrocities and coercive and pressursing tactics resorted to by the Respondent Company. I may observe at the juncture that it has averred by the Respondent Company in its Written Statement and in the oral evidence that the Company has been put to a financial loss and inconvenience to its customers, damaging the image of the Respondent Company. However, beyond naked words and assersion at the Bar, no shred of evidence has been placed on file by the Respondent Company.

12. The learned Advocate Shri B. K. Hegade for the Complainant Union has strenuously urged that the one hour partial token strike resorted to by the Complainant Union at the end hour of the shift and office-hours has been totally peaceful and causing no damage to any extent to the work and property of the Respondent Company. It is after discharge of their normal duties, in token of their protest, the Complainant Union had resorted to such a partial strike. For reinforcing his arguments, the learned Advocate Shri B. K. Hegde has adverted to the evidence of Sr. Executive (Human Resources) Shri N. M. Kulkarni at Exh. CW-2 who in his cross-examination in paragraph No. 4 on page No. 3 has candidly admitted that in CABD 110 workers are waking for servicing the Air-Conditioning equipments, at Chinchpokli unit. However, he cannot give any figures in respect of service activities in CABD prior to strike, during the strike or thereafter. In the same paragraph, he further admits that on 18th June 2001 and 22nd June 2001 all the employees had reported to their work in their respective departments and zones and he cannot give any details in respect of the work rendered by them on the days of

strike. He was not in a position to give the number of employees working under the supervisors. On page No. 4, the said witness further admits that he was not aware whether any complaint has been made by any supervisor of the Company in respect of any adverse effect caused to the Company on the days of the strike. He also is not aware whether any customer has complained to the Company in respect of any loss or inconvenience caused to them due to concerned employees resorting to strike. He also is not aware whether the number of clients of the Company has been reduced due to the strike resorted to by the employees. The learned Advocate vehemently submitted that in the Chinchpokli Unit of the Respondent Company most of the employees are sitting idle as the Company has not been providing them work. Despite it, has deducted the entire day's wages of these idle employees for resorting to a token strike on 18th and 22nd Jun 2001. In support of his arguments, the learned Advocate has adverted to the cross-examination of the said witness in paragraph No. 5 wherein he has admitted that from June, 2001 around 100 employees were sitting idle at Chinchpokli. In the same month around 100 employees were surplus at Chinchpokli. Some employees were idle as the work was drastically reduced. In the concluding portion of his cross-examination the said witness has admitted that he was not aware whether the Company has worked out the figures of the loss sustained on account of the said strike and he was not having such figure about the alleged loss sustained by the Company on account of such strike.

13. Adverting to the oral evidence of Shri Pramod Jaywant Pednekar, Asstt. Manager (HRD) from Thane Main Plant at Exh. CW-1, the learned Advocate Shri B. K. Hegde pointed out that in the cross-examination on page No. 3 the said witness has admitted that he was not in a position to give the production figures in the Thane Plant for the days of the strike, also for the earlier and later dates thereafter. He has admitted that the CABD Division, Company is not having any work to be assigned to the concerned employees and in the month of June, 2001 the said number of employees was around 170. So also in respect of ACB Division, the Respondent Company is not having enough orders on its hand for assigning the same to few workers. Except his department, the concerned witness was not concerned with allotment of work to other workers. In the month of June, 2001, about 7 workers were working in his department belonging to clerical category. He has further admitted that there was no monetary loss being caused to his department and he was not in a position to give the details in respect of such monetary loss caused to the other departments on account of the loss caused due to the strike. The production activities in the Main Plant, Thane are not dependent on each other. He further admits that the W. G. is required to issue the material throughout the shifts. He could not give any details in respect of non-availability of the materials from the Store-Keeper on account of strike. The Respondent Company had contended that the employees were chit-chatting and have not rendered any work. However, the said witness has stated that no memo has been issued to anyone nor he has seen personally any employee while chit-chatting. The Respondent Company had contended about the delay in dispatching the goods. However, the said witness on page No. 5 could not give any detail about the alleged delay in dispatching the goods. Same thing with the purchase of the materials. CW-1 could not give any adverse effect caused to the Company due to the strike. In respect of the employees working in the Accounts Department, the CW-1 could not give the details of the adverse effect caused due to the strike. I thus find that the Respondent Company has miserably failed in giving any details of the financial loss caused to its Company or any adverse effect on its working, image and on clientale. Beyond mere assersion at the Bar and the bald statement in the pleadings, I don't find an *iota* of evidence placed on file by the Respondent Company in support of such contentions. I therefore, uphold the contention raised by the learned Advocate Shri B. K. Hegde that the strike resorted to by the member-employees of the Complainant Union on 18th June 2001 and 22nd June 2001 was partial for 1 ending hour. It was in a form of token protest, causing no loss to the image, work and property of the Respondent Company. No adverse effect to any extent in any quarter has been caused to the Respondent Company.

14. The learned Advocate Shri B. K. Hegde adverting to the oral evidence of Jt. Secretary of the Complainant Union at Exh. UW-1 and that by General Secretary of the Federation at Exh. UW-2 has submitted that many of the workers are sitting idle for want of work. However, workers who were having work on their hand have discharged their duties and in support of his contention, the learned Advocate has adverted to the documentary evidence placed on file at Exh. U-12, the gate-passes in respect of dispatch of goods from the CABD, Department, which has been maintained by the member-employees which show such dispatch on 18th June 2001 to 22nd June 2001. At Exh. U-13, the Union has placed on file the Machine Repair Register of CABD Department giving the details of the repairs carried out on the machines from 14th June 2001 to 23rd June 2001 maintained by the Skilled-II Mechanics. Learned Advocate Shri B. K. Hegde placing a reliance on this oral and documentary evidence has submitted that whatever work assigned to the member-employees of the Complainant Union has been duly discharged on 18th June 2001 and 22nd June 2001. I uphold the said contention raised by the learned Advocate Shri B. K. Hegde. Admittedly the member-employees of the Complainant Union working in Chinchpokli Unit and Thane Main Plant have resorted to a partial token strike for 1 hour at the end of their concerned shift and office hours. As such, they have left their workplace for 1 hour at the end of their shifts and office-hours. In my considered view, therefore, at the most of the Respondent Company can resort to deduct 1 hour's wages of the concerned member-employees of the Complainant Union and its act of deducting the entire day's wages on 18th and 22nd June 2001 has been arbitrary and bad-in-law, amounting to unfair labour practice prescribed under Items 9 and 10 of Schedule-IV. The instant complaint has also been moved under Item 1 of Schedule-II of the M.R.T.U. and P.U.L.P. Act. However, I don't find any attempt on the part of the Complainant Union to establish its case under the said item.

15. In the aforesaid discussion, the complaint should succeed and accordingly I proceed to pass the following order.

Order

(*i*) Complaint (ULP) No. 480 of 2001 is allowed.

(*ii*) It is hereby declared that the Respondent Company has indulged into unfair labour practice under Items 9 and 10 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act and therefore directed to cease and desist there from.

(*iii*) The Respondent Company has been directed to pay wages to all the employees working in Mumbai establishment and Thane Main Plant for 18th June 2001 and 22nd June 2001, deducting there from wages for a period of one hour.

(*iv*) No order as to cost.

R. U. INGULE,
Member,
Industrial Court, Mumbai.

Mumbai,
dated the 3rd April 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
dated the 22nd April 2002.

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